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## Abstracts of Conference Presenters

### *Second IP & Innovation Researchers of Asia (IPIRA) Conference*

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Faculty of Law, Universitas Indonesia

# Conference Abstracts

## In Alphabetical Order by Surname (in capital letters)

**Kiyoshi ADACHI, National Graduate Institute for Policy Studies**

*An Examination of Selected Public Health Exceptions in Asian Patent Laws*

This study examines the variations within Asia of two particular exceptions to patent rights which are commonly justified under Article 30 of the WTO Agreement on Trade-related Aspects of Intellectual Property Rights (the TRIPS Agreement), namely the research and experimentation exception and the regulatory review (or ‘Bolar’) exception to patent rights. Both these exceptions are important in the light of public health objectives and countries’ overall scientific and technological aspirations. The study examines examples of these respective exceptions in patent legislation in South, Southeast and East Asia, and identifies peculiarities in the variations among the countries in these sub-regions. Policymakers and researchers may wish to take on board the examples of other countries when assessing the suitability of their own exceptions to patent rights.

**Martin ADELMAN, George Washington University Law School**

*The Tangential Exception to Prosecution History Estoppel in the US*

US patent litigation over Eli Lilly's drug *Alimta* (pemetrexed disodium combined with vitamin B12) has led to a strengthening of the doctrine of equivalents in the US, *Eli Lilly v. Hospira*, 933 F.3d 1320 (Fed. Cir. 2019). It should be noted that late in 2017 the Supreme Court of the UK dramatically revived the doctrine of equivalents, *Actavis UK Ltd. v. Eli Lilly*, [2017] R.P.C 21. A year earlier the Tenth Senate of the German Federal Court (Bundesgerichtshof) clarified and strengthened German doctrine of equivalents law by finding that all equivalents of *Alimta* infringed Lilly's German *Alimta* patent under German law, Case No. X ZR 29/15 of June 14, 2016. In the US the Federal Circuit applied a little used exception to prosecution history estoppel, tangential amendment, to find infringement under the doctrine of equivalents. Within days of this decision the Federal Circuit also applied the tangential exception in *Ajinomoto v. ITC*, 932 F. 3d 1342 (Fed. Cir. 2019). The use in two important cases of this obscure exception within days of each other makes what is a tangential amendment a suitable subject for a more detailed analysis. Ordinarily in the US a finding that the inventor or inventors during patent prosecution created a prosecution history estoppel bars any use of the doctrine of equivalents. But a finding that the amendment creating the estoppel was only tangential eliminates this bar. As a result, the widening scope of this exception creates the potential of making the doctrine of equivalents more widely available to patent owners thereby aligning US law more closely with the laws of Germany and the UK. If so, it is likely that this trend will spread to Asia.

**Christian ANDERSEN and Kota HAGIWARA, Faculty of Law, Maranatha Christian University**

*Data protection and Network Effect Concerning Monopoly and Privacy in the Digital Disruption Era in Indonesia*

Concentration of data and formulation of big data will cause significant innovation, but on the other hand, it raises concern about monopoly and privacy. In online shopping malls, if there are a lot of businesses that sell, there are many visitors to the site. And as the number of visitors increases, the number of businesses opening stores also increases, and the number of exchanges at the site also increases. In this way, the mechanism that increases convenience as the number of users increases is called a network effect. The network effect is not only for trading places like online malls, it also occurs when receiving free services such as search engines and social networking sites (hereinafter SNS). In December 2016, the Indonesian Government finally completed a long-overdue amendment to the 2008 Electronic Information and Transactions (EIT) Law. Alongside a few improvements to fix a vague defamation clause, but at the same time, there is no comprehensive data protection law in Indonesia except Ministerial Regulation (Permen) No 20 of 2016 concerning Protection of Personal Data (PDP). Indonesian legal scholars often refer to Article 28(g) of the 1945 Constitution as the basis (albeit rather vague basis) for more specific data privacy legislation. With reference to Indonesia's commitment to ensuring data privacy, the Indonesian Human Rights Law (Law No. 39 of 1999) broadly provides that each individual has the right to privacy. Article 32 of the Human Rights Law provides that freedom and secrecy of communications by letter or any electronic media may not be disturbed or interrupted except upon the instruction of a judge or other lawful authority. However, none of these regulations provide a comprehensive set of provisions for the protection of personal data, but rather simply provide the general idea of personal data protection without specific guidelines.

**Samuel ANDREWS, School of Law, University of Gondar**

*Unpacking the Intersectionality of IP Limitations Jurisprudence and the Marrakesh Treaty: Disabilities and Expressions in Copyright of Ethiopia, USA, and Nigeria*

This paper argues that IP jurisprudence should recognize humanitarian gestures and human rights as limitation and exclusion in copyright infringement law in the light of current economic realities. For the exposition of the above argument, the paper will proceed that the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (The Marrakesh Treaty) has opened the door for further discussion on the intersection of IP rights and international human right. This paper also argues that free speech, freedom of expressions, and access to knowledge for the disabled are forms of human rights imbedded within the principles of non-discrimination, equality and equal opportunity for all. Therefore, visual disability, free speech and freedom of expression command equal weight on the copyright exclusion and limitation scale. The paper analyzes how the Marrakesh Treaty unpacks the intersectionality between IP rights and human rights and humanitarian gestures in its objective of combating book famine and inaccessibility of digital and non-digital formatted-works for the visually impaired in the pursuit of equal creative opportunity for all. Critically analyzing the cases of Ethiopia, Nigeria and the United States will be the starting point. These countries have significant creative, political, and economic influences in their geographical sphere and beyond. The three countries have different approaches to issues of copyright exemptions and human right

regimes. The United States jurisprudence does not recognize free speech as human right that could excuse copyright infringement. Nigeria recently enacted a law that recognizes the protection of persons with disabilities and prohibits discriminating against them. Nigeria now has a heightened recognition of rights for the visually and hearing impaired in print or digital format. It recently proved this with its accession to TMT and depositing the instruments with the World Intellectual Property Organization. Nigerian anti-discrimination law recognizes the creativity and contribution of the disable in the economic spaces. Ethiopia on the other hand, has not acceded to any major IP Treaty including the Marrakech Treaty (TMT). However, Ethiopia has acceded to major human right Treaties including the African Human Right Treaty. The United States seems to have forged ahead of other developed nations in recognizing rights of the disable and handicapped persons in its society particularly in learning and literacy. However, the coming into force of the Marrakesh Treaty raises a conundrum on how the United States and other nations who have acceded to the Treaty would recognize the intersection of international human rights and intellectual property rights. Ethiopia's failure to accede and domesticate TMT denies the blind and visually impaired the innovative opportunities to access print, and digitally published works without infringing copyright of authors. This paper will proffer strategies available to Ethiopia in achieving its accession process and impels creativity of the blind and visually impaired.

**M. Rendi ARIDHAYANDI, Faculty of Law, University of Suryakencana Cianjur**

*Analysis of Sleeping Geographic Indications in Indonesia (Case Study of Pandanwangi Cianjur Rice)*

The Regional Government of Cianjur Regency through the Pandanwangi Cianjur Rice Conservation Society (MP3C) in 2015 Pianwangi Cianjur Rice has been registered with a Geographical Indication (GI). With the existence of GI protection, it can only be produced in Cianjur Regency. However, not maintaining the reputation, quality, and characteristics on which GI protection is based on an item can eliminate GI and terminate the right to use GI by GI Users. Therefore, it is not finished with the mapping and inventory of potential GI products, preparation for fulfilling the requirements for GI Requests, and requests for registration of GI only, this can be called Sleep Geographical Indications. This is because the GI protection, especially Pandanwangi Cianjur Rice, that is, consumers will get a guarantee to obtain the original Pandanwangi Cianjur Rice, and the businessman of Pandanwangi Cianjur Rice is protected from using the name Pandanwangi Cianjur Rice incorrectly by irresponsible parties, provide maximum benefits for improving the welfare of Cianjur Pandanwangi Rice business people in particular Farmers and the Cianjur community in general. Therefore, it is necessary to guide and supervise following Article 70 and 71 of Law Number 20 the Year 2016 concerning Trademarks and Geographical Indications.

**Abdul ATSAR, Faculty of Law, University of Singaperbangsa**

*Patent Quality Legal Audit: Evaluation Model of Conductive Governmental Legal Products for Foreign Investors*

This research aims to find an appropriate model in evaluating government legal products that are conducive to foreign investors through a legal quality audit approach. The research method in this article is normative juridical. Sources of data in this study, namely secondary data, in the form of primary, secondary and tertiary legal materials. Data collection techniques through library research while data analysis techniques,

the researchers use are qualitative analysis techniques. A legal quality audit approach is needed to ensure a conducive investment climate, especially for foreign investors who want to invest in Indonesia. One effort that can be applied to the quality audit science of Patent law is to overcome the polemic in Article 20 of Law No. 13 of 2016 concerning patents. Indonesian Minister of Law and Human Rights Regulation No. 15 of 2018 concerning the Use of Patents by Patent Holders, Article 3 and Article 4. Patent Holders who have not been able to implement their patents in Indonesia after their patent application is granted or granted, a Patent Holder may submit a request for postponement of the Patent application to the Minister with reasons. The time limit for 5 (five) years after the date of grant of a Patent is deemed sufficient for the Patent Holder to implement his patent in Indonesia. In the postponement period, the Patent Holder can also further consider how to implement his Patent in Indonesia. Or vice versa, if Patent Holder is deemed to have a less favorable business prospect, the Patent Holder may apply for removal of his Patent to the Minister. These provisions are very beneficial for the welfare of the Indonesian people, will absorb a lot of labor from Indonesia and the transfer of knowledge to the Indonesian people. However, the polemic that occurs is that the majority of Patent Holders are not from Indonesia, at this time can not implement their patents in Indonesia, because there are still many inhibiting factors that can originate both from the internal Patent Holder itself and the readiness of the Government of Indonesia to support the implementation of patents for Patent Holders. But the science aspect of the Ministerial Regulation cannot be used as an explanation of the Law, because its position is under Government Regulation, this is contrary to Law No. 12 of 2011 concerning About. Establishment of Legislation. Besides that regarding the Patent registration system which is still territorial, in order to obtain patent protection, the inventor must register in that country, a one-stop Patent registration system must be immediately established for World Trade Organization (WTO) member countries, making it easier for the investor because it is more efficient in terms of time and cost. This will have a positive impact on the investment climate in a country.

**Miranda Risang AYU PALAR, Faculty of Law, Universitas Padjadjaran**

*Concept of Communal Intellectual Property Rights in Indonesia*

The evolution of intellectual property rights protection system in Indonesia is influenced by foreign countries and international laws. Initially, the Netherlands established a number of acts concerning authors' rights, patents and industrial property rights in the Netherlands Indie colony as a former Indonesian territory, according to Paris Convention about the Protection of Industrial Property Rights and Berne Convention about the Protection of Literary and Artistic Works. Then, after the Indonesian independence, the colonial laws were amended. However, in substance, the amended laws were still regulating the same subject matters as the previous ones namely copyrights, trademarks and patents. After Indonesia ratified the World Trade Organization's Agreement on the Trade Related aspects of Intellectual Property Rights (WTO-TRIPS) in 1995, the existing laws were re-amended again in regard with TRIPS by the endorsement of industrial design law, trade secret law, integrated circuit lay-out law, inserted provisions about geographical indications in the trademark law, and a sui generis law for the protection of new variety of plants. Most of the subject matters, however, related to advanced and high-tech industries, being held by individuals (except geographical indications and collective marks), and entitled for exclusive proprietary of rights with limited terms of protection. These characters were viewed as foreign, so in many cases, they did not fit the nature of Indonesian intellectual property rights' products whose holders are communities. Consequently, the Indonesian national laws were mostly used to protect foreign intellectual property products rather than the nationals. Since the ratification of Nagoya Protocol on Access to Genetic

Resources and the Fair and Equitable Sharing of Benefits arising from their Utilization, new type of intellectual property protection system has been emerged. All subject matters of this new emerging system share a similar character, that the right holders are not individuals but communities. In this regard, in 2017 the Directorate General of Intellectual Property Rights of the Republic of Indonesia officially announced the new protection system titled the communal intellectual property rights. Communal intellectual property rights consisted of rights on geographical indications, genetic resources, traditional knowledge and traditional cultural expressions. This announcement actually relies on a pragmatic rather than a solid theoretical approach, that the protection for Indonesian communal intellectual property potentials is highly important irrespective of the vague concept about what exactly a communal intellectual property means. Consequently, many empowerment programs for communities who are supposed to be the holders of the rights are problematic, because there is no a crystal clear concept about what forms of communities are eligible to become the proprietors of the rights, and how they shall be functioning effectively in protection the rights. In the above context, this paper would like to discuss the concept of communal intellectual property rights that can be used as a theoretical basis to compose implementing regulations as well as programs for community empowerments in Indonesia. The questions are: why is it called 'communal intellectual property right'? What kind of community can be regarded as the holders of the right? Does the right provide the holders with ownership and/or other entitlements? What would be the benefits of the right for the holders? Research for this paper was conducted based on utilitarian theoretical approach and qualitative juridical normative methods. All data consist of secondary data from related laws and regulations, legal theories and doctrines, books and journal articles from libraries and digital sources. The research found that the nature of communal intellectual property rights in Indonesia should be based on the new theory about community custodianship in a modern management system and the inclusivity of rights.

**Sathyan BALACHANDRAN, Tamil Nadu National Law University**

*Intellectual Property Rights as a Facilitator of Technology Transfer*

Technology transfer concerns the efficient and equitable allocation of existing technology in the world. As such technology is often seen as an essential tool for solving challenges confronting humanity as a whole, such as, at present, climate change and the transition to a low - carbon economy. The view that technology transfer is a human rights issue continues to have currency (eg the Working Group on the Right to Development). Since the 1970's technology transfer has only grown in importance because knowledge-intensive industries account for an increasing share of economic activity, and because technology is a central determinant of international competitiveness. The diffusion of the world's stock of technology is incomplete and highly concentrated. A small number of countries account for most of the stock and the creation of new technology (World Bank [2008]). The wide dispersion in technology endowments accounts for different preferences on intellectual property right ('IPR') policies across countries. Even though the Kyoto Protocol does not require technology transfer in CDM projects; some countries evaluate their technology transfer potential. Chinese guidelines prescribe that 'CDM project activities should promote the transfer of environmentally sound technology to China' (Art.10 Measures for Operation and management of Clean Development Mechanism Projects in China [2005]). Technology is non-rival and thus displays at least one feature of a public good. By contrast, excludability, the second criterion for a public good is a function of IPR's. It is seen to be in society's interest to encourage innovation whenever social benefits, which often differ from private benefits, exceed private costs of development. IPRs redistribute welfare between technology producers and users. Net importers of technology could face a net welfare loss

when IPR's are strengthened, though some countries may experience mixed effects, with considerable local innovation in some sectors. IPRs raise the costs of technology transfer without the consent of the right holder through damages, confiscation of counterfeited goods, and criminal penalties. The main impetus behind the strengthening of IPRs over the past two decades has been the view that IPRs provide critical incentives for innovation, though recognition of the moral rights of the creator has also played a role. IPR regimes permitted the emergence of generic drugs industries through reverse engineering in Japan and the Asian Tigers. These countries were the recipients of voluminous involuntary technology transfer in the 1970's and 1980's.

**Arpan BANERJEE, Faculty of Law, University of New South Wales and Jindal Global Law School**

*What Should Trade Secrets Legislation in India Look Like?*

In India, trade secrets and confidential information are mainly protected via the law of contract and breach of confidence. The absence of a specific trade secrets statute in India has long been a source of criticism from Western governments and industry. In recent years, scholars, policymakers and businesses within India are also leaning towards the view that India requires a trade secrets statute. Tellingly, the Indian government has recently held consultations with two US experts seeking greater trade secrets protection in India: Mark Schultz, Professor at Akron University and President of the Global Trade Secrets Council (who has also developed a trade secrets index and assigned India a low score) and Pamela Passman of the Centre for Responsible Enterprise and Trade (a former legal counsel with Microsoft). Therefore, it could be argued that scholars should no longer ask whether India should enact a trade secrets/confidential information law, but instead assume that such a law is likely to be drafted and passed within the next five to six years. The aim of my paper is thus to deliberate on the scope of such a law. Arguably, the easy and non-controversial aspect of this exercise is to codify principles already recognized by Indian courts in breach of contract and breach of confidence cases, including basic definitions. The more difficult aspect, however, is to introduce certain additional concepts, such as those advocated by Schultz in his index or those recognized in the Trade Secrets Directive in the EU or the Defend Trade Secrets Act in the US. Here, concerns may be raised over issues like criminalization, whistleblower protection, liability of non-contracting parties and remedies. My paper thus speculates over provisions which could be opposed by Indian scholars or activists for being over-protective of industry interests, and possible safeguards to balance competing concerns.

**Muhammad Masum BILLAH, College of Law, Sultan Qaboos University**

*Dreaming of a World with Online Open Access for All Books: Can This Dream Become a Reality?*

If we wake up one day and learn that all the books so per published in the world from time immemorial are now freely available online, imagine the relief this news would bring to researchers at universities in developing countries who could not hitherto access many recently published books. This will generate an indescribable joy and happiness in the mind of booklovers who cannot afford to buy all the books they love to read. Can we have such a world in reality? What are the barriers that we face to having such a world? Are these barriers still relevant in the age of Internet and low cost of publishing and distributing books? Whatever cost is there in publishing today, can we have alternative means of recouping these costs

to charging the users of books? The paper will explore all these questions in light of present reality of book publishing and copyright laws. The paper aims at proving that books can exist and book publication can thrive in a world where books are freely available online. Copyright on books should exist to recognize only moral rights of authors and some economic rights of copyright holders. When it comes to book, copyright should not cover the exclusive right of reproduction of a work by its copyright holder. For this to happen, we will need to amend the existing copyright laws. This, however, may take time to implement. In the meantime, we can focus on the alternative means of publishing where the cost of publication is not borne by users. There are already many such initiatives by universities, libraries, professional societies, and even commercial publishers to publish open access books online. The paper will also highlight the feasibility of such initiatives and show their viability as alternative modes of publishing to traditional commercial publications.

**Catharina BUDININGSIH, Faculty of Law, Parahyangan Catholic University**

*Under the Pressure of Generalized System of Preferences and TRIPS PLUS: Indonesia*

TRIPS (Trade Related Aspects of Intellectual Property Rights) Agreement determined the minimum standard of Intellectual Property protection that all of World Trade Organization (WTO) member must comply with. However, some developed countries want a higher standard of protection, called TRIPS Plus. Examples of TRIPS plus are data exclusivity and second medical use provisions. The method used by developed countries applies in developing countries, not through multilateral agreement but through bilateral free trade agreement. Meanwhile some developed countries, including United States of America (USA) have a facility for reducing the import duties, called the Generalized System of Preferences (GSP). In order to get the GSP facilities, beneficiary countries must meet all the requirements set by donor countries. One of the requirements is in the field of Intellectual Properties. Indonesia gets GSP from the USA. The position of Indonesia's trade balance with this country is a plus for Indonesia. So that Indonesia has a strong desire to maintain GSP. In 2016 Indonesia enacted new patent law which requires local working patent. By the USA this is considered below the standard of Article 27 (1) TRIPS Agreement, so it needs to be replaced. In addition, it appears that the USA is pressing for data exclusivity and second medical used patents provisions. Indonesia's consideration when making the new patent law that the law can be useful for Indonesia's interests as well as in line with international principles. Even though, seeing the seriousness of the government to revise the provisions in the new patent law, it seems that USA through GSP tools can pressure Indonesia to comply the standard TRIPS Plus with which initially paid more attention to the interests of Indonesia.

**Angwara CHAIANONG, Pridi Banomyong Faculty of Law, Dhurakij Pundit University**

*Online Copyright Infringement in Thailand Compared with Malaysia, China and USA*

The technology advancement has rapidly changed as it is obviously seen that the Internet of things has played a vital role in our daily life, especially the Internet access. The copyright piracy through the Internet network has been increasing. Therefore, the enforcement of technology strategy to protect copyright works by Thai cabinet has enacted to the Copyright Act (No.2) B.E.2558, on 2015. This act has applied with the Digital Millennium Copyright Act (DMCA) including the take-down notice of the United States of America and Europe as the model. The purposes of this act are to protect new works of the creators and

the initiators disseminated through the Internet and also to accompany with the Internet users' behaviors. This paper will analyze the Copyright Act related to the reliability of the Internet Service Provider: ISP of the United State of America, China and Malaysia. The objective is to study strengths and weaknesses of its principles for copyright enforcement strategy in the Internet service providers 'liability part', practical in Section 32/3 of the Copyright Act (No.2) B.E.2558 of Thailand. This section provides the liability limitation of the ISP to protect the Internet service providers from risks in the case of copyright piracy. The copyright owners can enquire the Court to grant the ISP to take down pirated files from their websites by showing adequate evidences to the Court. Eventually, the ISP has to follow the Court's command to eliminate the pirated files because they do not have the liability of the pirated action. Moreover, the paper will examine advantages and disadvantages of the principles of law related to the ISP and the copyright owners by comparing Thai copyright law and the international principles of laws pertaining to the suppression of copyright piracy on the Internet. This is a documentary paper getting information from technical articles, Thai copyright law, DMCA, Law of Malaysia Act A1420 Copyright (Amendment) Act 2012, online information, related articles, and copyright enforcement. In Section 32/3, it was found that the process and the protection of copyright owners and copyright piracy focuses on court procedure. This process is time consuming and it also has impacts on suppression since the technology has changed all the time. In my opinion, the section 32/3 is considerably difficult to solve the problems of intellectual property infringement on online copyright infringement problems. As a result, Thailand will continue continuously be the country of Priority Watch List (PWL) according to the Special 301 Report of the United States Trade Representatives.

**Mohd. Shadab DANISH, School of Humanities and Social Sciences, Indian Institute of Technology, Indore**

*Role of Patent Statistics in the Identification of Valuable Technology: An Analysis based on Renewal Information*

This study assesses the extent to which the patent characteristics disclose the value of patents across the technology and ownership status. It includes all granted patents filed at the Indian patent office (IPO) from 1st January 1995 to 31st December 2002. The renewal length of the patent is used as a proxy variable of the patent value. A patent can be valuable in many different ways depending upon the purpose and motivation of the inventors. Sometimes it is filed as a deterrent for the competitors, to create a patent thicket, and to earn revenue through licensing. Since there is no universally accepted definition of patent value, its estimation becomes more challenging. Unlike other tangible assets, patents are not bought and sold in an organized market. However, many scholars working in this area tried to simplify the methodology for patent valuation using different characteristics of patents (see Schankerman and Pakes, 1986; Hall et al., 2003; Bessen and Miskin 2009). Nevertheless, one can rank valuable patents on the scale valuable to not so valuable patents. Moore's (2005) study is a reference point where she instead of estimating the monetary value of patents ranked and compared patent characteristics to identify valuable patents. Earlier studies on the patent valuation apply sophisticated simulation techniques to capture individual patents value using renewal information along with other observable characteristics of the patents (Bessen, 2008, Danish et al., 2019). On the contrary, the ranking method study doesn't capture any monetary value but they apply the renewal length of the patent as a proxy of the value of the patent. The renewal length of the patent reveals the importance of patent for inventors. For example, if a patent is highly valuable then a patentee will renew it till its complete legal age (Pakes and Schankerman, 1984).

The present study identifies the valuable patents for five major technological domain (Electrical, mechanical, instruments, chemistry and other field) and 36 technological sub domain. The result of this study enables to understand the important technologies from the renewal perspective in India. Patent value in the present study refers to the ordinal number (1, 2, 3 and 4) categorized on the basis of renewal events of the patent. This study assumes that patentees are rational and therefore to control spending on renewal fee they carefully examine expected benefits from the patents. To identify the valuable patent this study applies generalized order logistic regression. The empirical findings demonstrate that patent with high value shared some common characteristics like smaller claims, larger inventor size, lower grant lag, large family size, and lower technology scope. Moreover, in the ownership category, the higher value patents are owned by foreign assignee rather than domestic one; and with respect to technological domain chemistry and electrical patents have high value as compared to instrument patents. This study further estimated patent values for the technological sub-domain. The result indicates that not all patents in chemistry and electrical technology class are as valuable as compared to pharmaceutical patents. Based on the outcome, this study provides suggestions for policy-making.

**Paramita DASGUPTA, West Bengal National University of Juridical Sciences**

*Ensuring Universal Health Coverage in a Post-TRIPS India*

Among the various irreversible truisms of a knowledge-economy driven post-globalisation marketplace is the fact that, intellectual property has indeed moved into the mainstream of national economic and developmental planning for good, – not to mention its gradual emergence as a central element in multilateral trade relations. Increasingly therefore, intellectual property finds itself at the very heart of debates on how the available resources must best be organised so as to achieve effective, optimal and just outcomes – a salient case in point would be: the campaigns to improve access to life-saving drugs. Successful resolution of “conundrums” such as these demand an inclusive, pluralistic and well-rounded perspective on the politics and economics that shape and mold intellectual property laws and policies inasmuch as they pertain to the rapid strides in R&D as well as all its myriad applications, – thus requiring one to be at all times, – aware and mindful of the wider socio-economic ramifications, not the least, the undeniable tensions that continue to play out against a backdrop of an increasingly commercial, competitive and disparate global marketplace. That said though, such an idyllic prescription is a lot tougher to follow through in practice, and perhaps nowhere is this chasm between the ‘Is’ and the ‘Ought’ more starkly apparent than in the cases of developing nations, such as India, – poised as we are, – on the brink of a massive self-reinvention and socio-economic metamorphosis, where the power-principle balance is indeed a particularly tricky tightrope to negotiate; It is in this “post-TRIPS” era, informed by this very perspective, and armed with the lessons gleaned through the course of our tumultuous and often fraught legislative history, that this paper seeks to analyse key elements India’s very first National IPR Policy (2016) read with relevant sections of India’s National Health Policy (2017), in light of the Delhi Declaration (2018) – in an effort to identify existing weaknesses and potential strengths, – and to hopefully, make a few considered suggestions to help ease the way forward in the nation’s collective endeavour to try and provide a truly inclusive and sustainable policy model and ethos, in our bid to carry out the pledge of Universal Health Coverage not just under the United Nations Sustainable Development Goals, – but as a crucial element of very own Constitutional ideals as well.

**Lihini Madushika DE SILVA, General Sir John Kotelawala Defence University**

*Balancing the Rights of Trademark and Geographical Indication Owners in Sri Lanka: A Social Engineering Task*

There has been a heated debate concerning the relationship between trademarks and Geographical Indications (GI) in the global context. When a trademark and a GI are applied for the same sign in one jurisdiction, which sign must be prioritized? This is a question national jurisdictions must answer without jeopardizing the rights of either party. Therefore, this research firstly aims to explore the reasons for the rise of a conflict between trademarks and GIs. Next, the research evaluates the application of the concepts of 'first in time first in right' (FITFIR) and 'coexistence' for the conflicting situations between trademarks and GI in the European Union (EU) and India. Finally, the research puts forward insights on how Sri Lanka should address the point where GIs intercept trademarks. Accordingly, this research was mainly carried out following the black letter law approach where qualitative data was gathered through the sources including statutes, judicial decisions, legal treatises, legal text books, journal articles, conference proceedings and websites. Moreover, in order to address the socio-legal aspect of the research, a number of key informant interviews were conducted. In addition, the comparative legal analysis concerning the jurisdictions of European Union and India was conducted. The findings suggest that Sri Lanka lacks provisions pertaining to the conflict of GIs and trademarks. Despite the potential GIs in the country, the legal framework has paved the way to register trademarks similar to GIs. In the absence of a functioning GI register, a situation does not arise where a prior GI exists and an application for trademark similar to the GI comes later for registration. In terms of the Intellectual Property (Amendment) Act, No. 07 of 2018, only the Minister can prescribe GIs in respect of goods and products. Does this mean that the Minister can prescribe GIs despite the existence of similar trademarks? When the Minister has prescribed GIs, can the similar trademarks be registered? These questions need to be answered as the present Intellectual Property Act, (as amended) No. 36 of 2003 lacks provisions in this regard. In the case of a senior GI and a junior trademark, the EU and India prioritize GIs. However, it is possible for a later registered GI to co-exist with a prior registered trademark even though it is against FITFIR. The Agreement on Trade related Aspects of Intellectual Property Rights (TRIPS Agreement) also has permitted coexistence of GIs with trademarks. Delayed implementation of a GI register in Sri Lanka has the possibility of leading to more conflicts between GIs and trademarks. Hence, having a number of potential GIs, Sri Lanka will also benefit from equivalent provisions as in the EU and India. Such reform would assist in balancing the legitimate interests of GI users, mark owners and consuming public while FITFIR brings inequitable and crude solutions.

**Rakhmita DESMAYANTI, Faculty of Law, Trisakti University**

*Patent or Trade Secret: The Right Choice for Business Owner*

Business owners always want to make their income rising. They will do important thing to protect it. In common, they named the product to introduce their specialty and registered it to get the protection by the law. We know it as brand. In Intellectual Property aspect, people able to protect their product with others. Such as patent or trade secret, are the choices for business owner to get another protection by the law. The choice their made, is depending to the product. If the product is similar with kinds of innovation, patent usually as the choice. If the protection for the secret information that they have, they choose trade secret for protection. Producing different kind product to make it easily identifying as their product is also an

important thing for them. Famous featured product is determining the company income. That's why business owner need to protect their product. The problems that are used as research material are 1) What is the background of choosing the object of protection for entrepreneurs? 2) Does the business owner know the difference between patents and trade secrets? The writing methodology for this writing is normative method. Data was taken in this research is base on utilized secondary data. The research result is the choice they made is depend to their knowledge about patent and trade secret. The company with bigger scale, commonly choose patent for protecting their products. In their opinion, patent protection have time limit. But it is not a problem because their company will make new innovation if the protection expired. Business owners who choose protection with Trade Secrets have valuable information that used in the product or the process with a background still view the confidentiality they have as the main key to making the products they produce. Not only small businesses but also large businesses prefer to protect the valuable information that they have because they do not limit the protection of confidential information. There are reasons for mixing some products into new products that are better than the original product. So the chosen protection option not only looks at the object of its product but also how the business owner views the protection that is right for the product produced. We can know that the business owners have sufficient understanding to protect the production produced besides giving a name to the product.

**Charu DUREJA, Rayat College of Law, Panjab University Chandigarh**

*Arbitration is an Alternative and not a Primary Method for Intellectual Property Right Dispute Resolution in India*

Back in the 1980s, experts and executives alike heralded alternative dispute resolution (ADR) as a sensible, cost-effective way to keep corporations out of court and away from the regular litigation that devastates winners almost as much as losers. Over the next few years, a large number of big corporations adopted the ADR and many of these companies reported considerable savings in time and money. Arbitration is a preferable method of resolving any type of disputes arising out of international commerce. Intellectual property is a rapidly expanding field where absolute predictability is not assured. Indeed, the very reason a user is keen to acquire a particular right is that it represents a significant advance in the underlying technology. That being so, total predictability is never possible and it may be that the system acquired will not immediately perform up to the expectations even with "staged acceptance". Expanding very rapidly, intellectual property disputes involve increasingly highly technical matters. Moreover, intellectual property laws themselves are quite complex. The multiple advantages of arbitration over traditional litigation for international commercial disputes include mainly, speed, cost, confidentiality and expertise. Generally, Intellectual Property Disputes arises when a person infringes one's copyrights, patent rights or trade mark rights or any other kinds of Intellectual Property Rights. The Intellectual Property Disputes can also be resolved by courts. But the use of Arbitration in resolving Intellectual property disputes is quicker than by Courts and it is effective and easy to resolve by Arbitration. Still, people are using arbitration as an alternative and not as a regular choice for resolving the IP disputes. The question arises where did it go wrong? Was ADR really just an empty promise? The procedure is seen as a way of settling peripheral, less important disputes, or, they abandon it if they fail to get the desired result. So, the question is why ADR is still an alternative and has not become the primary method of dispute resolution. Secondly, is ADR really different from litigation. there are very few rules governing it, the procedure is often allowed to become a litigation look-alike. Whenever that happens, the cost of ADR begins to approach the cost of the litigation that it is supposed to replace.

**Ike FARIDA, Faculty of Law, Hitotsubashi University and Satya ARINANTO, Faculty of Law, Universitas Indonesia**

*Protection of Information Technology in Industrial 4.0 Era in Indonesia*

The industrial revolution 4.0 has changed the world of industry and society, where people nowadays are getting closer to digital products and artificial intelligence (AI). This has changed the society's perspectives regarding the information and technology. Just couple years ago, people only used the internet to send and search the data, but right now the internet is becoming a foothold in an industrial chain, the function has been grown drastically. The information technology is growing rapidly, in which information technology products were not only considered as a work of copyright but also as the industrial products that have public selling value as well. In Indonesia however, the protection of information technology products is limited to certain field only, such as the copyright. As the Law Number 28 of 2014 concerning Copyright was enacted in 2014, but it does not cover all important issues regarding protection related to the Copyright. It is mentioned in the Law of Copyright that online and offline programs and applications are generally referred to computer programs. However, the referred computer program seems to be reserved for personal using only, not public using as used by online service provider application companies. Those online-based applications offer transportation service, paid video and music services provision, Thus the conclusion states that the protections of online applications has a legal vacuum. Since the protection of intellectual property in the current laws are not yet specifically stipulates and covers the protection, therefore the government shall issue the rules to facilitates the Industrial Design protection. The rules of legal protection in the industrial design are providing only to the products that can be used to common individual regular goods. This research will analyze whether Law No. 31 of 2000 concerning Industrial Design can facilitate the protection of online-based information technology. This research will use the normative juridical methods by examining secondary data. The result is expected to provide a solution or recommendation to the government related to the protection of online-based applications used by companies that providing online services.

**Rebecca FERDERER, Graduate School of Law, Nagoya University**

*Comparative Analysis of Regional Collective Trademarks and Sui Generis GI Protection in Japan*

This paper provides a comparative analysis of the protection offered under the regional collective trademark system and the sui generis GI protection system. The analysis outlines the framework of legal protection provided by each system, including the objectives and scope of protection as well as the individual features of the systems. In Japan, there was no protection system for regional brands before the introduction of the regional collective trademark system in 2006. It was argued that in order to prevent confusion among consumers as to the true origin of products other than wines and spirits, producers of those goods should be given a way to prevent misappropriation of their regional brands. The Japanese Diet amended the Trademark Act for the creation of a system that would allow certain legal entities the right to protect products bearing geographical names as a special type of collective trademark. However, increasing demands for a more internationally harmonious GI protection system by international trading partners, Japan adopted the GI Act in 2015. The sui generis GI protection system is used to certify that a registered product's quality, reputation, or other characteristic has a link to the geographical name it bears. It sets a

quality standard and quality control requirement and prevents the use of these valuable brand names by products lacking quality or products produced outside a designated geographical area.

**Nobuya FUKUGAWA, Graduate School of Engineering, Tohoku University**

*Determinants and Impacts of Incorporation of Local Public Technology Transfer Organizations: Evidence from Kohsetsushi of Japan*

Legal reforms act as a fundamental shift in incentive systems by creating and redefining incentive tools, such as ownership, discretion, and reward. This study examines the impacts of the Local Independent Administrative Corporation Law enacted in 2003 that had altered IPR ownership and managerial autonomy of Kohsetsushi, technology transfer organizations established by local governments to help small local firms upgrade basic technological skills. Panel data analysis reveals that, first, incorporation was not meant for the improvement in technology transfer productivity measured by royalty. Second, incorporation pushed Kohsetsushi to pursue different resource allocation strategies (i.e., research/inventive activities and diffusion/extension activities) simultaneously. Third, technical consultation negatively affected royalty of incorporated Kohsetsushi. Fourth, incorporation did not make patents more commercially valuable. Fifth, ATT of incorporation is significant and negative. Policy implications of the results are discussed.

**Roza Siyum GETACHEW, School of Law, Wollo University**

*The Role of Copyright law in Promoting Gender Equality in Ethiopian Music: The Case of Folk Music*

Throughout history, musicians have been closely involved with influencing social change. Currently, musical artists increasingly use the works to promote gender equality. Gender equality is a fundamental human right. In Ethiopia, musicians have used songs to protect human rights and to bring social change. However, there are also songs in Ethiopia that sexualize, demoralize or humiliate women and that promote gender stereotype and inequality. Most Ethiopian folk songs pejoratively define a weak man descriptively called a woman. Ethiopian folk music objectifies women as sex objects and weaklings. The folk lyrics also ascribe a women's role only to domestic household space. Ethiopia has taken different measures including designing a policy, enacting legislations and constitution reform to reduce gender inequality. The paper explores whether copyright protection is extended to folk music, which dehumanizes women. The paper will make recommendations on how copyright and folk musical works would promote gender equality. The Ethiopian laws as agency of social engineering could influence the ecosystem as it relates to culture and innovation. Ethiopian copyright and neighboring rights protection (Amendment) Proclamation No. 872/2014 protects the rights of folk music writers, composers and performers. Ethiopian Constitution has specific provisions to promote gender equality. Therefore, Ethiopian copyright and neighboring right should discourage musical works that portray women as a sex object and weaklings. However, Ethiopian copyright and neighbouring right protection proclamation has no provision that explicitly or tacitly prohibits musical works that promotes gender inequality.

**Saurav GHIMIRE, International Law Association (ILA) Nepal Branch**

*Strengthening the Position of Farmers in the Regime of Plant Variety Protection Laws: A Case of Indonesia*

The present-day concept of Intellectual Property Right (IPR) which initially emerged in Europe and North America was extended world-wide in process of harmonization of international trade rules through World Trade Organization (WTO). Besides its geographical extension, the concept of IPR has also developed its domain to include innovation in plant genetic resources, which makes it a highly debated issue particularly in respect to the developing countries, where agriculture continues to be an important source of livelihood for majority of people. The Plant Variety Protection (PVP) Act was enacted in Indonesia in response to Article 27.3(b) of the TRIPS Agreement, which requires Members to provide an effective sui generis law for the protection of plant varieties if not protected by patents. Few years before, there had been several cases in Indonesia prosecuting farmers under the issues of plant breeding and intellectual property. A study was carried out in two villages of Indonesia in order to explore the issues that the farmers have been facing in relation to Intellectual Property Rights (IPR), particularly the plant breeders' rights. The qualitative study involved consultation and discussions with individual farmers, representatives from farmers' association, activists, local experts in the study site. The study found out change in farmers' perception of PVP law and the prevalence of strong mechanisms to protect the plant breeders' rights, such that the farmers are frequently under surveillance by the concerned authorities; several farmers have been fined in the past, and farmers still receive threats of prosecution by the seed companies, which has intensified unnecessary fear among them disrupting their freedom to breed and exchange seeds freely. This paper presents the major findings of the study and pinpoints the legal notions of current based Indonesian law which hinders farmers ability to exchange and breed seeds. Building upon the analysis, the paper suggests that some modifications in the prevalent law can secure the position of farmers to breed and exchange seeds.

**Jayanta GHOSH, West Bengal National University of Juridical Sciences**

*Data Protection and Big Data Security of Public Health: Comparative Approach of US and India*

The advancement of the technology and the dynamism of legal world is force the human to think the outlook of data protection and big data security issues in this recent era. Big data itself is not only information but more than that. The more data we gather the harder it is to extract usable information as the huge amounts of data exceed human capabilities of consideration due to the technological threat. As privacy became a luxurious problem for every individual now a day, while narrowing down these issues the present day's emphasis are given in data protection with synchronize way big data security. Considering public health, individual's personal data is under threat by the interference of the stranger when an individual share information with institutions. In addition, often confused with trade secrets and confidentiality, privacy refers to the use and disclosure of personal information and is only applicable to information specific to individuals. Since personal information is a manifestation of an individual, personality and it recognized that, the right to privacy it as an integral part of the right to life and personal liberty, which is a fundamental right guaranteed to every individual under the Constitution of India. This research tackles some of the challenges of US and India regarding these issues. It explores the unique features of data and highlights the ways in which data undermines long-standing assumptions about the

link between data location and the rights and obligations that ought to apply. It warns against the kind of unilateral, extraterritorial law enforcement that electronic data encourages in which nations compel the production of data located anywhere around the globe, without regard to the sovereign interests of other nation-states. Why should either privacy rights or government access to sought-after evidence depend on where a document is stored at any given moment? Conversely, why should State 'A' be permitted to unilaterally access data located in State 'B' simply because technology allows it to do so, without regard to State 'B's rules governing law enforcement access to data held within its borders? Moreover, the lack of a comprehensive legislation pertaining to privacy and data protection has been a matter of concern. This concern has been particularly expressed by organization's who are dealing with personal information of health in India and are transmitting confidential data into other countries. These concerns really growing issues that need to be tackle.

**K M GOPAKUMAR, Third World Network**

*Patents and Innovation: Post TRIPS Behaviour of Indian Pharmaceutical Companies*

One of the most cited arguments in favour of patent protection is its potential to induce innovation. Recognising its limitations, often patent is used as an indicator for measuring innovation. Many authors argued at the time of implementation of the TRIPS Agreement that the introduction of compulsory product patent protection would induce innovation in the Indian pharmaceutical sector and check the free riding. In the absence of product patent protection often generic pharmaceutical companies free ride on the innovation and reduces the incentive to invest in R&D. This would affect the advancement of science and technology and efforts to find medicines to various diseases. Most of these claims and counterclaims emerged before the TRIPS implementation in India. Therefore, it was not possible to back the arguments with concrete evidence. Though studies after the implementation of the product patent regime looked at the innovation activities of the Indian pharmaceutical companies but did not look at the patent behavior of the Indian pharma companies and to evaluate the quality of innovation. India introduced product patent protection from 1<sup>st</sup> January 2005. Indian patents Act introduced many safeguards against the patenting of known substances to prevent the practice of evergreening or follow on innovation. Therefore, theoretically the patents India sets a high threshold level for patent protection and grants patents only to that invention which crosses the high threshold level. This makes it possible to assess the patent claims to evaluate the quality of innovation. India granted nearly 2600 product patents from 2009 to 2018. The vast majority of these patents are owned by foreign companies. However major Indian companies have also applied and obtained patents in India as well as abroad. After 14 years of the introduction of the product patent regime, there is enough data to find out whether the introduction of the product test has a positive impact on Indian pharmaceutical industries' innovation activities. This paper aims to look at the patent behavior of India's top 10 generic companies and test the hypothesis that whether the patent data reveals an increase in the innovative activity. Towards this purpose first, a set will select the top 20 companies based on their sales turnover then will further shortlist by excluding companies that do not spend less than 7% of their sales turnover on R&D. After the selection of 10 top generic companies will collect the details of granted patents and pending applications from the database of the Indian patent office. Complementary searched will be carried out in EPO and USPTO to find out the patenting behaviour of these companies in the regulated markets. The third step is to examine the patent claims to ascertain the nature of the claimed invention. This paper would not only inform the patenting behaviour of the Indian pharmaceutical companies but also

provide more insights into bringing quality elements to the patent as an indicator of innovation measurement.

**Massimiliano GRANIERI, Department of Mechanical and Industrial Engineering, University of Brescia**

*Sowing and Cultivating the Seed of Diversity in Agri-food: Intellectual Property Protection in Transnational Perspective*

Seeds are relevant for agri-food markets, particularly in developing economies where agriculture is still a major source of wealth and employment. They stand at the beginning of very long and complex chains where they are used both as commodities for food production and as genetic materials for further propagation, as well as for other novel uses (including production of biomaterials). Seeds are also the natural repositories of biodiversity, which allows for the existence of plant varieties and, hence, food differentiation and quality. Seed preservation and transmission is also embedded into communitarian values for agriculture-based societies, both in the Western world and in less developed countries. Biodiversity is under attack and it is exposed to three main challenges, such as the massive resort to genetically modified (intellectual property-protected) seeds, the aggressive and unauthorized access to genetic resources (sometimes referred to as biopiracy) and other phenomena that generally qualify as reverse technology transfer. In an attempt to preserve biodiversity, without slowing down or reducing research and development paths, states have reverted to legal rules to ensure that biodiversity is maintained and aggressive practices by multinational corporations do not jeopardize the complex system of good practices and values underlying the management of genetic resources, including those concerned with seeds and plants in general. The Nagoya Protocol is one such legal instrument. Seeds and plants are protected in intellectual property under a number of different and evolving paradigms, each of them with its advantages and hurdles. From a comparative perspective, they represent concurring models of regulation that should balance various interests, while giving incentives to companies investing in selection of new varieties. The candidate paper investigates the regulatory competition that takes place in intellectual property regimes for seeds and explores how, and to what extent, such regimes evolve and prevail over other, in light of developments (e.g., the way courts interpret exhaustion of self-replicating material) that threaten other values. This is a promising and demanding field of observation for comparative law and development studies of intellectual property systems, since it implies arguments of international externalities, regulatory competition, harmonization and legal transplants about a topic which is directly linked to the survival of the mankind on this planet and the sustainable use of natural resources.

**Guswan HAKIM, Faculty of Law, Halu Oleo University**

*Indigenous People's Rights in the Protection of Geographical Indications in Indonesia*

Geographical Indications in addition to being of economic value, also of cultural value and even the pride of regions and countries, is one of the geographical indications in Indonesia that is branded by the company Key Coffe Inc. From Japan registered the Toraja Arabica coffee with the "Toarco Toraja" Trademark with registration number 75884722 in Japan On January 14, 1977. The trademark besides displaying the word "Toraja" was also the Toraja traditional house as a Trademark background. The legal consequences of

Toraja coffee, which is registered as a trademark in Japan, has an impact on trade activities, forbidding coffee exporters from using the Toraja name without the permission of Key Coffe Inc. in Japan. This is very detrimental to the country and at the same time the people of origin from Toraja Arabica Coffee. The type of research used is Normative Legal Research, in this case normative legal research methods or library legal research methods are the methods or methods used in legal research conducted by examining existing library materials such as documents or examining relevant laws and regulations, as well as its implementing regulations for literature, books, journals, and other written materials that are relevant to the subject of the study. Protection of the rights of indigenous peoples in Indonesia related to Geographical Indications implied in Article 25 letter (d) PP of Geographical Indications which states that violations of Geographical Indications include one of them, namely the use of Geographical Indications without rights even though the place of origin of the goods is stated. Use of Article 25 letter (d) PP of Geographical Indications is inadequate because it still distinguishes between Geographical Indications and Indications of Origin. Therefore, it should not only be Geographical Indications that are protected without rights in their use, but the Origin Indication also really needs to be protected.

**Taslima JAHAN, Faculty of Corporate & Industrial Law, United International University**

*Collective Right in Trade of Geographical Indication: Challenges & Opportunity for Development under Present Legal Framework of Bangladesh.*

Geographical Indication plays unique role of intellectual Property under TRIPS regime that are flourished with pro-European vibe in global trade. Later this inflow of local trade protection hinted many developing countries like India, Bangladesh to set their own sui-generis legislation for protection of Geographical Indication goods. Since beginning TRIPS developing countries faces difficulties to adopt Article 22 to 24 obligations into their national legislation or Sui-generis. As for understanding territorial demarcation and registration in giving right to use Geographical Indication among different interest holders become a complicated tool in protection of Geographical Indication. While free riding practice of Geographical indication among traders is a common barrier in misleading and unfair competition about GI goods which is significantly uncared in Bangladesh. Henceforth village-prone culture GI goods and producers who are living in poverty, no knowledge in current trade or market behavior increases off chance to reform the exclusive market of Geographical Indication of Bangladesh .However TRIPS prospective of global trade, reward and mode of IP designation over Geographical Indication opened again to estimate the potential economy of Geographical Indications of Bangladesh under the special shadow of intellectual property law. Bangladesh in a certain inter-State conflict in registration of Geographical Indication with India made sense the necessity of separate Sui-generis legislation titled “Geographical Indication of Goods (Registration & Protection Act-2013)” to grip all GI products originated within the boundary of Bangladesh. From the experience of Indian-European Sui-generis practice of GI, this Act introduces collective right registration system eloping private right trend to save distinctive nature & benefit lies on Geographical Indication goods. Considered to present situation, the Act allows any association or government or non-government authority to represent the GI producers and to become authorized user through registration. The objective of this study is to look into how this Act depicted collective right shadow to work out in developing present context of Geographical indication goods of Bangladesh. So this writing effort to sense how much this collective right device works to enhance the scope of economic development healing poverty to an opportunity of local empowerment through Geographical Indication. In a finding this article pointed out

certain possible challenges of this sui-generis legal framework yet to progress on Geographical Indication protection of goods which may a key tone of success in near future trade of Bangladesh.

**Amit JAMSANDEKAR, Faculty of Law, Leicester University**

*Copyright - A New Regime in India*

In India, The Copyright Act, 1957, came to be amended in the year 2012. The amended Act introduced wholly new concepts, rights, and provisions of statutory licenses, which, prior to the amendment, were issues in litigation between various stake holders. The amended Act gives the right of collection of royalty to the author of the copyrighted work even after the assignment of the work and the right of equitable remuneration in respect of commercial utilization of the work. It also restricts the right of the author to assign the work, and curtails the right of the author to collect royalty by restricting assignment of it. The broadcasting organisations (the Act does not define the term ‘broadcasting organisation’) get a statutory license to broadcast the works after fixation of rate of royalty by the Tribunal. The provisions of ‘first ownership’ in the works is now curtailed to suit the other amended provisions of the Act. The Government justified the amendments introduced in the Act on the basis of public interest and an attempt is now being made to justify the curtailment of the constitutional right of property. The constitutional validity of the amended provisions of the Act is a subject matter challenge before the constitutional Court on the ground that it is ultra vires the Constitution of India, a breach of a fundamental right guaranteed by the Constitution. Copyright, a composite right which includes human rights, the right of property, and public interest, which the Act attempts to protect, is a contentious issue between the authors, entrepreneurs and related right holders i.e. broadcasters. The interpretation of the Act requires a balance and an equitable approach while dealing with the challenge of constitutional validity, social and commercial impact of the provisions, and compatibility with international practice and treaties.

**David J. JEFFERSON, School of Law, The University of Queensland**

*Plant Breeders’ Rights Proliferate in Asia: The Spread of the UPOV Convention Model*

It is well understood that the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) requires World Trade Organization Member States to enact laws that grant intellectual property for new varieties of plants, whether via patents or a “sui generis” system. Since the entry into force of TRIPS in 1995, some of the most prominent real-world examples of sui generis plant variety protection laws have been tested in the Asian region, notably in countries such as India, Malaysia, and Thailand. These regimes have been designed to enable World Trade Organization member countries to meet their obligations under the TRIPS Agreement, while also addressing priorities that are germane to the needs of local agriculture. The Asian sui generis plant variety protection laws have generally received favourable attention from civil society institutions and legal scholars for their attempts to balance the interests of diverse stakeholders. Nevertheless, in recent years, Asian countries have begun to reject the option of designing locally tailored legislation, instead electing to follow the UPOV Convention template for plant breeders’ rights. This paper traces the increasing prevalence of the UPOV model in the Asian region. The author demonstrates that among the various factors that have precipitated this shift, “hard” influences are among the most significant. These are represented primarily by new obligations that bilateral and regional free trade

agreements executed subsequent to the entry into force of the TRIPS Agreement impose. Such trade agreements frequently contain terms that require adherence to the UPOV Convention. However, as the author shows, other “soft” influences such as commercial interests both endogenous and exogenous to the Asian region have also played an important role. The paper analyses several case studies where developing countries in Asia have adopted national plant breeders’ rights laws modelled on the UPOV Convention framework. In the conclusion, the author acknowledges that there are many reasons for why countries in the Asian region might prefer to follow the UPOV model. These may include the desire for predictability via harmonisation or the motivation to share administrative resources, for instance surrounding testing to establish distinctness, uniformity, and stability for new plant varieties. However, the author also argues that as Asian countries increasingly follow the logics of plant breeders’ rights, it becomes paramount that their governments endeavour to enact parallel policies to safeguard and foster the customary agricultural practices of small-scale farmers. Among others, these could include laws designed to protect agrobiodiversity and traditional knowledge, or to advance food sovereignty.

**Rahmi JENED, and Yenny ETA, Faculty of Law, Universitas Airlangga**

*Protection of Indonesian Traditional Cultural Expression in the Sui Generis System*

This paper aims to analyze the importance of Indonesian Traditional Cultural Expressions governed by sui generis. To obtain these objectives, this legal research uses statutory approach with a systematic interpretation. In this research, a comparison was made not only based on national law but also international conventions about traditional cultural expression.

Based on the results, it can be concluded that the regulation of Indonesian traditional cultural expression in Law Number 28 of 2014 on Copyright still cannot realize the protection of Traditional Cultural Expressions due to differences in characteristic between copyright with traditional cultural expression.

**Ajoy JOSE, Indian Institute of Technology, Kharagpur**

*Traditional Knowledge – The Changing Scenario in India*

Traditional Knowledge has ancient roots and is often informal and oral-is not protected by conventional Intellectual Property Systems. This has prompted some countries to develop their own sui generis systems for protecting Traditional Knowledge. In the debate about the protection of TK, the implied beneficiaries of this protection are traditional peoples. Invariably, these are referred to as ‘Indigenous Peoples.’ A definitional issue, related to the delineation of the content of TK, is defining the groups or communities who can assert property rights over this knowledge. The discourse about the protection of TK assumes the necessity for this protection and also assumes that the primary beneficiaries of this protection will be indigenous peoples and community groups. However, the State as guardian of its people’s cultural heritage also has an interest in the preservation of the TK, which exists within it. The main objective of protection would be to obtain recognition and some compensation for the commercial use of TK outside the community or the society, which generated it, either by excluding the unauthorised use by third parties or by ensuring a right to remuneration (or benefit sharing) for such use. India is a party to the CBD, which came into force on 29 December 1993. It has three main objectives, namely the conservation of biological

diversity, the sustainable use of its components and fair and equitable sharing of benefits arising out of the utilization of genetic resources. CBD envisages that the benefits accruing from commercial use of TK have to be shared with the people responsible for creating, refining and using this knowledge. Art 8(j) of the CBD provides for respecting, protecting and rewarding the Knowledge, Innovations and Practices (KIP) of local communities. Realizing the need to ensure that the holders of TK, which is not still in the public domain should be able to get the benefits arising from the use of such knowledge, an enabling provision has been made for protecting the TK in the Biodiversity Act, 2002. Indian Patents (Amendment) Act, 2005 also deals indirectly with the protection of TK. The objective of this article is to analyse the extent of protection of Traditional Knowledge under Biological Diversity Act, 2002 and also to analyse changing scenario of Traditional Knowledge Protection in India.

**Mohammad Ataul KARIM, Department of Law, East West University**

*Sui-generis System in International Intellectual Property Regime: Lessons for Bangladesh*

The term *sui generis* has been used in intellectual property legal taxonomy to delineate a special kind of protection system which is “of its own kind” and does not completely or partially fit in any of the existing forms of IPRs. It is unique because it inherently offers flexibilities, diverse and Tylor-made approach to the relevant policy makers or legislators to craft special provisions in dealing with the peculiarity of unconventional or emerging issues of intellectual property. Till date, the scope and extents of *sui-generis* system in international intellectual property regime have not been beyond debates and disputes due to the competing values, approaches and mechanisms pursued by the various stakeholders. Apparently, the long-cherished yet unaccomplished task at WIPO-IGC for developing a viable system or possibly adopting a *sui-generis* system for TK, TCEs and GR have already demonstrated the daunting complexities of making a *sui-generis* system at international level. Yet again, the scope of *sui-generis* system for plant varieties protection, as reflected in article 27. 3 (b) of TRIPS Agreement, has favoured the proposition of empowering the member States to opt for *sui-generis* system at domestic level. Like other areas of IP, the developed and developing countries have taken diametrically opposite positions on the premise that to what extent *sui-generis* legislation should be reflecting the principles of IP in case of plant varieties on one hand and extending it for any other areas of IP on the other. Despite the considerable debates on the nature, extents and elements, the justifications of *sui generis* system in intellectual property regime is gaining grounds because of, inter alia, the formidable challenges to traditional forms of IP which are somehow partially or fully incompatible to offer enough protection to some of the emerging yet timely issues. The appropriate IP protection for emerging technologies such as artificial intelligence, dig data, block chain or suitable IP protection for long discussed issues such as GR, TK and TCEs are some of the glaring examples that posited complicated challenges and warranted special policy and legislative measures. On this premise, it remains to be seen that if there is scope of *sui-generis* system in international intellectual property regime for such emerging issues, if so, whether *sui-generis* system may satisfactorily resolve the current legal discontents or moral dilemmas of IP protection for such emerging areas. This paper, at the aforesaid backdrops, revisits the theoretical and practical discontents of extending intellectual property to emerging issues. It explores the ontology, scope and extent of ‘*sui generis*’ system in international intellectual property regime and lessons for Bangladesh, as a developing country, to adopt ‘*sui-generis*’ regime for emerging issues.

**Shiho KATO, Graduate School of Social Sciences, Hiroshima University**

*Cross-Border Injunctions in Japanese IP Cases*

The presentation will explore the issues arising out of cross-border injunctions in IP rights infringement cases, mainly focusing on the Japanese legal system. In the presentation, cross-border injunctions, or extra-territorial injunctions, refers to as those that the forum court in State A issues with respect to any infringing act, which has been done outside the territory of States A (e.g. uploading via internet), of IP rights under the law of State A. While it is well known that US courts have issued such injunctions, technological innovation has lead more and more IP right holders to resource to cross-border injunctions, especially in cases of IP infringement via internet. With this respect, it is noteworthy that the Supreme Court of Canada recently upholds worldwide interlocutory injunction against Google in such a situation (*Google Inc. v. Equustek Solutions Inc.* [2017]). While injunctions with global effects might contribute to the effective protection of IP rights beyond borders, there remain both theoretical and practical questions related to such injunctions in IP infringement cases. First, the nature of injunction under IP law is still unclear: whether injunction is in nature same with other remedies under the applicable IP law, such as monetary compensation, or rather injunction is one of the procedural means available by the forum court under its procedural law (*lex fori*). If injunction is an exercise of the power by the forum court, it seems plausible to consider it has geographical or spatial limitation. Second, even if injunction in IP infringement cases is considered as one of the effects of IP rights, territorially unlimited injunctions might cause several practical problems. For example, the following considerations might affect the court's determination of the issuing cross-border injunctions: the difference between the rules under the applicable IP law and the IP law in the country where injunction is sought; the effectiveness of cross-border injunctions through the mechanism of recognition/enforcement of foreign injunctions by the courts in other countries; the possibility of the overlap and conflict of injunctions in the forum state and in the other states; the peculiarity of infringements via internet; and so-forth. Contrary to the literature abroad, in particular the one in the US, the existing Japanese literature has not fully addressed this topic and not discussed the questions raised above in the context of Japan. Against this background, the presentation, after analyzing court decisions concerning cross-border injunctions in Japanese IP rights infringement litigations, will consider whether, when and how the Japanese court might issue cross-border injunctions in cases of infringements of IP rights under Japanese law.

**Fennieka KRISTIANTO, President University**

*Promoting Social Enterprises through Partnership in Franchising: Potential Conflict between Franchisor and Franchisee*

The more rapid business competition, encouraging business actors to strengthen their business' networks, one way is through a franchise business. The problem is, how do franchisors who expand their business through partnerships by establishing limited liability companies with franchisees manage the franchise business? On the one hand the franchisor as the owner and founder of the franchise as well as the holder of intellectual property rights, and on the other hand, the franchisor is also a shareholder in the company that receives the franchise. This partnership is supposed to give mutual benefit for both parties, more business for franchisors and promoting social enterprises for micro and small business actors. The purpose

of this research is to explore the potential conflict of interest between the franchisor and the franchisee in the form of partnership involving micro and small enterprises, as well as finding the harmony among them.

**Ranjeet KUMAR, Department of Computer Science and Engineering, Madanapalle Institute of Technology & Science**

*Impact of IP Generation and Technology Management at the Higher Educational Universities in the Developing Countries*

Innovations are achieved through research in any stream of the technology. Every innovation comprises of some inventive steps whether in the form of some methods or manufacturing processes and this in turn facilitates its commercialization for the purpose of use in the public domain. Currently the industry-academic collaborative research in advanced countries is contributing for huge commercialization in the market. The Universities in developed countries are making enough financial gains from this activity. Countries to name a few like United States, Germany, Japan, Austria, France, Netherlands etc generate their substantial economy through the patent licensing and so they are rated as economically strong countries in the world for their innovations reaching to the stage of commercialization. In contrast to the same, the Universities of large no. of developing countries in Asia and Africa are ineffective to enrich their countries in this regard. The present paper analyzes the factors behind the IP policies and the overall ecology beneath this phenomenon and some effective remedial measures in this regard.

**Senthil KUMAR, Bethel Medical Mission & Hosmat Hospital Educational Group (co-author C K Senthil KUMAR)**

*Intellectual Property Rights in Physical Therapy Journals- A Systematic Survey*

Physical therapy is an allied health profession implementing prevention, promotion, treatment and rehabilitation in healthcare through exercises, electrical or thermal modalities, mechanical/ electronic mobility equipment, and manual therapy for relieving pain, improving mobility, enhance functional independence and return to activity. Growing knowledge base and increasing professionalization essentiate innovation and reporting of such innovative procedures is mandatory by scientific journals for evidence-informed healthcare. The aim of study is to analyse the 'instruction for authors' of physical therapy journals for their specification on intellectual property rights (IPR)- patents, copyright, trademark, design and clinical trial registration. A systematic review of 07 top physical therapy journals (Physical Therapy PTJ, Physiotherapy PT, Journal of Physiotherapy JoP, Physiotherapy Research and Practice PRP, Physiotherapy Research International PRI, European Journal of Physiotherapy EJP, and Journal of Physical Therapy Science JPTS) was conducted in their 'instruction to authors' to identify the attributes of IPR. Descriptive analysis was performed using frequencies and comparisons were done using Chi-square test & Kruskal-Wallis test at 95% confidence interval using SPSS software version 22 (SPSS Inc, Chicago, IL) for Windows. Only four journals (PTJ, JoP, PRP and PRI) emphasized at least 3/5 items of IPR in their manuscript requirements, of which all described copyright, trademark and trial registration. Patent was mentioned only in PTJ and design registration was not found in all journals. Overall, PTJ was a torch bearer

for IPR in scientific domain, which was shown by significant ( $p=.012$ ) findings in comparison to other journals. The study findings are important to highlight the importance and awareness of scientific community about IPR so that healthcare and its delivery could be effectively implemented without medicolegal issues.

### **Vijay Makyam KUMAR, I-Win IP Service**

#### *Use of Blockchain Technology in Intellectual Property Rights (IP Asset) Management And Required Legislative Framework- An Indian Perspective.*

The present Digital era is an era of disruptive technologies that are rapidly evolving and differentiating the way of conducting business. 5G Spectrum, Artificial Intelligence, Cloud Computing, Virtualization, Internet of Things, Blockchain, Deep Learning etc., are some of the emerging technologies that shaping the way businesses are conducted around the world. Globalization and rapid progress in technology paved the path for increasing internationalization of business operations and thereby managing Intellectual Property (IP) assets across the globe has become cumbersome activity. IP Owners across the world are increasingly concerned about management of their IP Assets through these technologies and appropriate legislations to protect these evolving technologies i.e., 5G Spectrum, Artificial Intelligence, Blockchain, Internet of Things. There is an immediate requirement of perfect Legal system for activities ranging from generation of ideas, protection mechanisms and its enforcement by utilizing these technologies. There are several ways by which the IP Rights owners are managing their Intellectual property licensing activities/methods, most of them are pre-digital age. Each country recognizes different methods of according licenses by IP Owners around the world. There seems some consistency, but largely different concepts and different methods are used for management of Intellectual Property rights. The differences are more apparent from individual managing the intellectual asset from legal entities managing their IP assets. Blockchain Technology is a digital ledger-based Technology that uses cryptography to record transactions between the participants, each of whom retains a replicated node of the overall ledger. This technology got popularity after it has been applied for trading of bitcoin – the dominant cryptocurrency currently in circulation which is based on a peer-to-peer electronic money system suggested by “Satoshi Nakamoto” in 2008. Blockchain is now considered as technology-based solution for various transactions involving technical aspects. However, it needs support of legal and regulative framework to effectively implement the said technology and needs consensus on various issues such as data privacy, Intellectual Property, enforcement of Contracts and choice of Jurisdiction etc. A report of Organization for Economic Co-operation and Development (OECD) on Blockchain Technology and Corporate Governance Technology, Markets, Regulation and Corporate Governance gives the clear picture of the aspects of Blockchain Technology and its understanding among participants, myths surrounded and the requirement for legislative regulations. Intellectual Property Rights licensing and IP asset management is implemented to cut down the risk of infringement of rights by third parties and to maximize the royalties (Revenues) for the entity. Traditionally companies engage in conducting IP Audits periodically and constituting IP investigating agencies to trace infringement and thus managing their IP Assets. Few Software companies started using DRM (Digital Rights Management) or TPM (Technology Protection Measures) for effectively controlling infringement of their IP assets. However, as technologies progressed the infringers found several other means of the infringements and such DRM/TPM techniques rendered no use. Blockchain Technology has been ability to reduce the infringement activity to zero (0) % and thereby effective control to the IP assets for its owners. However, the existing legislations does not recognize

blockchain Technology framework. Information Technology Act, 2000 in India has to the greater extent provided legislative framework for managing Digital content and surrounding contracts. Information Technology Act, 2000 also dealt with Online Counterfeiting and addressed safe harbor provisions for protection of intermediaries. However there needs a comprehensive legislative framework that should recognize, regulate and guide the usage of Blockchain technologies.

**Qi Jun KWONG, Graduate School of Law, Nagoya University**

*Patent of Importation: Historical Remnant or Viable Alternative to a “World Patent?”*

Patents of importation, also known as patents of confirmation or introduction, were granted to encourage and disseminate inventions from other countries. Historically, such patents are granted to the first party to import and commercialise products and processes from other countries, in contrast to the first inventor or patentee. Distinguished from regular patents, patents of importation are special patents granted under conditions different than that of ordinary patents, and thus, not subjected to Article 4bis of the Paris Convention. Countries are free to determine if the validity of such patents are dependent or independent of the principal patent to which it is based on. While provisions on patents of importation no longer exists in the national laws of most countries, the revalidation aspect may somewhat still be observed in bilateral treaties. Different arrangements have been made between countries in recognising the validity of a granted foreign patent, and usually to exempt such patents from further examination. The agreements have assumed several forms, which include automatic recognition of a foreign country’s patent, or requiring a separate formal validation process. Cambodia for instance, has entered into several agreements with countries such as Singapore to validate the granted patents. With the increased ease of circumventing national patent laws through cross-border divided infringement, and with the effects of patents remaining mostly territorial, allowing the grant of patents of importation would extend the scope to which a patentee may derive protection. As of now, the closest alternative to a “world patent” would be a region-wide unitary patent such as patents issued by the Gulf Cooperation Council (GCC) Patent Office or the Organisation Africaine de la Propriété Intellectuelle (OAPI), or further supplemented by a unified patent court as proposed in the European Union (EU). Beyond such regional arrangements, patentees are still required to obtain separate patents in each individual country for the same invention to acquire worldwide protection, which is costly and time-consuming even with the Patent Cooperation Treaty (PCT) or through any other expedited routes. Taking into account of the above concerns, this research proposes the adoption of a restricted form of patents of importation, with several variations, that exist mainly for the purposes of allowing the state granting the principal patent to establish jurisdiction over the agreed upon territories. The proposed system would still retain the territorial aspects of patent law, and allow patentees the possibility of obtaining remedies and thus capturing the value of the invention.

**Agus LANINI, Faculty of Law, University of Tadulako**

*Protection of Indigenous People's Rights over Genetic Resources around the Loro Lindu National Park*

Indonesia as a mega diversity country has been recognized by the international community, biodiversity as a genetic resource has also been understood and practiced in diverse ways as traditional knowledge but indigenous people ignore it as a potential for intellectual property. The innocence about traditional

knowledge is often misinterpreted caused certain parties gain the benefit. A socio-legal research method was used for this problem by observing and interviewing indigenous groups around the Lore Lindu National Park, Sigi Regency and Poso, Central Sulawesi Province. The results revealed that the protection of the rights of indigenous peoples to genetic resources such as traditional knowledge about medicinal plants or plants and animals has been regulated in international and positive law. The legal implications of utilizing genetic resources that have been managed traditionally, will rise to the rights of indigenous peoples as stakeholders.

**Van Anh LE, School of Law, Warwick University**

*Vietnam in the CPTPP: The Trade-off between Trade and Public Health?*

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership – also known as CPTPP is a trade agreement between Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. The CPTPP which came into force at the end of 2018 is a milestone for the promotion of free trade around the world and the biggest trade deal of the 21<sup>st</sup> century. CPTPP negotiations began after its forerunner, the Trans-Pacific Partnership (TPP) Agreement reached a deadlock because of the withdrawal of the United States on 23 January 2017. Throughout its negotiations, the TPP came under fierce criticism as regards some of its provisions, in particular those relating to access to affordable medicines. Under the new trade deal, most of the original TPP text remains unchanged, and two-thirds of the CPTPP's 30 chapters are identical to the TPP. The CPTPP text shows that 22 provisions (out of the over 1,000 total provisions) of the TPP have been 'suspended', rather than removed. The suspensions are mainly in the IP chapter. Some of the extreme clauses which the US insisted on (but which many others were unhappy over) do not come into force in the CPTPP. However, such a suspension indicates the possible returning of the US in the future. If the US decides to rejoin the CPTPP, the suspension might be lifted. Suspended are some provisions that adversely affect access to medicines, including obliging the TPP countries to allow patents for a second use of a medicine, and for new methods for using the medicine. Also suspended is a clause to extend the normal patent term of 20 years if a country delays granting a patent for a new medicine? This proposed article aims to explore to what extent the new agreement, despite being considered as less damaging than its precursor, will have a deleterious effect on access to medicines in Vietnam. Amongst the 11 signatories of the CPTPP, Vietnam has the lowest GDP per capita. Vietnam's membership to the CPTPP has been hailed as bringing significant economic benefits to the country. However, one study analysed the potential impact of the proposed patent regime under the TPP on access to ARVs in Vietnam and found that '82% of the eligible HIV could be treated' if the country utilised the TRIPS flexibilities, whereas 'few as 30% of Vietnam's HIV population will have continued access to ARVs' when the final TPP provisions are implemented. With the withdrawal of the US, the paper attempts to consider would it really be worthwhile for Vietnam to gain new but limited export opportunities at the expense of losing so much policy space?

**Ha LE THI THU, Faculty of Economics and International Business, Foreign Trade University (co-authors Quyen DAO THI MAI)**

*Intellectual Property Management: Case Studies Of Japanese And Vietnamese SMEs*

This paper aims to investigate the significance of intellectual property (IP) management from a strategic perspective based on a systematic analysis of successful practices of Japanese and Vietnamese small and medium-sized enterprises (SMEs). This paper summarizes the current status on IP policy and strategy in Japan and Vietnam. Based on the framework of Intellectual Creation Cycle by Japan Patent Office (JPO), the authors redesign the cycle taking into account the different management scenarios of polled Japanese and Vietnamese SMEs. Given the significant value of patent and trademark in the IP portfolios of businesses in both countries, we identify representative SMEs in each country with respect to strategies on patent and trademark individually. We then conduct interviews with six Vietnamese SMEs and ten Japanese ones operating in different leading business lines with a specific focus on their activities in each step of the IP four-step cycle: Creation, Registration, Utilization and Protection. A comparative analysis on the practices of Japanese and Vietnamese firms is generated using a qualitative approach. The study also extracts implications for the analysis and puts forward suggestions for future practice of IP management in SMEs in Japan and Vietnam. The authors conclude that IP management considerably contributes to the firm performance, which is directly linked to business success. Moreover, at the “Creation” step, it holds true for both countries that collaboration with universities and public research institutions is needed in an effort to develop high value-added products for the first time. Also, from the policy-making perspective, a number of lessons for Japan and Vietnam have also been drawn out: first, universities and public research institutions should be promoted to commercialize their research outputs; second, enhancement of finance scheme by the industry plays an important role in the IP commercialization process. This paper provides strategic guidelines for both Japanese and Vietnamese SMEs in the practice of corporate IP management. It also proposes some practical insights for policy makers with respect to the promotion of IP among businesses, in particular SMEs for the purpose of economic growth.

**Valeriy LISITSA, Department of Business Law, Civil and Arbitration Procedure, Novosibirsk State University**

*The Legal Protection of Investments into Digital Financial Assets: International and National Law Aspects*

Investments, both national and foreign, remain to be the key factor of the economic development of any country, in which some new trends and challenges have been arisen recently. Thanks to the progress of information technologies a lot of new objects have appeared in business and turned to be involved into legal transactions. In particular, instead of conventional money, electronic money and cryptocurrency have been already used as an alternative way of payment in contracts. In addition, in 2019 in Russia digital rights as a distinct object of investing were introduced into the civil legislation. Although most rules of international and national law embodied into numerous law sources and instruments, including bilateral investment treaties, provide the legal protection of any tangible and intangible, movable or immovable property, they were indeed designed for traditional objects (things, shares, securities, etc.) recognized in most jurisdictions. Unfortunately, the present law usually establishes neither a clear legal definition and attributes nor the necessary legal mechanism for the use of new intangible objects, such as digital rights in business transactions and protection investor’s rights in the sphere concerned. In this regard it is argued

that new provisions be introduced into the law, including the order of appearance, implementation and enforcement of different property rights upon such new digital assets of investors, appropriate legal treatment for new subjects on the Internet, such as information intermediaries (operators of information systems, owners of websites, hosting providers, administrators of domain names, etc), as well as applicable law and jurisdictional issues to transnational legal relationships arising from conducting foreign economic activity with those intangible assets. In particular, it is worth to highlight the experience of Russia which attempted to govern investing with the use of investment platforms in a special federal statute in 2019. It established the legal framework of functioning different participants, such as investors, investment host companies, operators of investment platforms, as well as the order of appearance and implementation of digital rights recognized as a type of property rights. In this respect some new instruments were introduced (contract on acquiring a digital right, contract on investing with the use of investment platform, digital certificate as a non-documentary security, etc.).

**Takeshi MAEDA, Graduate School of Law, Kobe University**

*Data Transaction and Protection of Data under Intellectual Property Law*

Data transactions and intellectual property rights have connections in various ways. Many kinds of intellectual property are involved in data transactions, but the roles of them are not necessarily organized. According to the traditional understanding of intellectual property rights, they are granted to ensure the incentive to produce intellectual products, and regulating the transaction of intellectual products is not understood as the purpose of intellectual property law. Rather, it is sometimes considered that monopolies given by intellectual property rights can hinder transactions. However, in recent years, scholars pointed out that intellectual property rights have a role to promote transactions of things protected by intellectual property rights by specifying the subject of trade. Intellectual property laws that can protect data include the Patent Act, the Unfair Competition Prevention Act (UCPA) and the Copyright Act. Since patent law only protects technical ideas that are means of solving a certain problem, data is not protected as such. However, if data can be regarded as a means to solve a problem by being provided for information processing, it is possible to obtain patent protection to that extent. Next, the UCPA provides for the protection of trade secrets, and if certain data meets the definition of "trade secret", it is protected under UCPA. Similarly, UCPA provides for the protection of "Data for Limited Provision" and data that meets that definition is protected under UCPA. In UCPA, data is protected as such, but the scope of the UCPA is limited, which means that the protection does not extend to data use in general. Finally, copyright law protects creative representations of ideas or emotions, and databases are protected as works if they are created through the selection or systematic construction of information. Data recorded in a work, such as music, movies, photographs, or text, may be protected under the Copyright Law to the extent that unauthorized use of such data is deemed to constitute a statutory act of exploitation of the work. As such, intellectual property law provides only patchwork data protection. It is not understood that there is a need for general data protection to give an incentive for the creation of them. However, it does not mean that current data protection may always be sufficient. The protection of "Data for Limited Provision" was introduced in the 2018 revision of UCPA to give incentives for investment in big data. Remarkably, the amendment assumes that the investment will be rewarded through data transactions, and is aimed at facilitating them. This model is different from the traditional one which assumes the investment for creation will be rewarded through monopoly. In the future, it will be necessary to consider the necessity

both to incentivize the creation of data and to facilitate transactions of them when discussing new legislation of data protection.

**Twinkle MAHESHWARY, Kirit P. Mehta School of Law**

*Personality Rights- Need for a Separate Legislation*

Personality rights per se are not defined anywhere, but it means the right over the unique traits of personality that a person develops over a period of time by working on it. It can also be construed as a property right as the right to exploit the personality so developed vests with the person who owns that personality. However, there is no clear legislation that deals with personality rights in India. In India, personality rights are generally invoked through the right to privacy as guaranteed under Article 21 of the Constitution or through the right to publicity as inferred from Article 19 of the Constitution. Right to privacy, is developed by judicial pronouncements in India and can have a subjective interpretation. The unclear position of privacy under Indian legislation makes it difficult to ascertain the liability in cases of infringement of privacy, especially in cases where the concerned personality in question is a celebrity. A celebrity develops his personality over years so as to commercially benefit from it, but because of the huge fan base the line of privacy gets blurred for such celebrity and therefore invoking right to privacy may or may not be at the advantage of the celebrity. Right to publicity or image rights as a property right could be considered a better protection under law. A person builds his persona to add commercial value to it and so that he can exploit it in a manner he/ she deems fit. However, there is no clear legislation that protects such personality of a person. In various situations we have seen that a celebrity has taken trademark protection on their names, but that's not a comprehensive protection of the personality of an individual. Personality includes not only name but the unique features of a personality such as image and likeness including voice of the person. No protection under the ambit of Intellectual Property Law is available for such facets of personality. Indian judiciary has started recognizing certain aspects of personality and have extended protection to such facets of personality, but due to the lack of a clear Legislation on the same, the decisions are highly subjective to interpretation of each individual situation. The increasing number of celebrity endorsements and other commercial activities by exploiting personality of an individual makes it necessary to have a clear law to protect such personality rights of an individual.

**Ziana MAHFUZZAH, Faculty of Law, Universitas Sumatera Utara**

*Duties and Authorities of Indonesian Collective Management Organization As a Royalty Management for Songs and Music Contained in Digital Music Services*

Song and music are one of the creations protected by Law No. 28 of 2014 concerning Copyright (UUHC 2014) as regulated in article 40. Entering the latter half of the decade of 2010, music listeners in Indonesia were spoiled by the presence of digital music services. The royalty issue has always been a problem for creators or holders of copyright and related rights in the music industry, including royalties on songs and music contained in digital music services. Departing from this problem, the UUHC 2014 requires the establishment of a Collective Management Organization (CMO) to help the creator, copyright holder, or owner of related rights obtain royalties for their work. Then the question is how the duties and authority of in managing royalties for songs and music contained in digital music services in Indonesia? The research

method used is normative juridical with descriptive-analytical specifications. The results of the study mentioned that CMO has the duty and authority to manage the creator's economic rights in the form of collecting and distributing royalties as stated in article 89 of the UUHC based on the power of the CMO members. Wahana Musik Indonesia (WAMI) is one of the CMO that has managed and distributed royalties on songs and music contained in digital music services. The absence of regulations and fare causes the income of Indonesian musicians to be said to be still small considering the royalty calculation is determined by the number of streams performed by the user. Therefore, it is expected that CMO will immediately determine the regulations and tariffs for songs and music contained in digital music services as has been done by the United States Copyright Royalty Council.

**Bashar MALKAWI, College of Law, University of Punjab**

*Online Piracy: The Egyptian Movie Industry and Copyright Enforcement*

The Egyptian movie industry, which dates back to 1930s, has grown to become one of the largest movie industries in the world. Online piracy costs the Egyptian movie industries billions of dollars annually. This is despite the fact that Egypt modernized its intellectual property laws in light of the World Trade Organization agreements (WTO). So, this begs the question as to why the current laws do not deter online piracy and what legal and socio-economic changes need to be taken to uproot this phenomenon. Court cases are examined to determine why state apparatus are inclined to enforce "traditional" copyright cases while they face difficulties in case of movies. My paper proposes to study these issues. The paper will examine three broad research questions: the difficulties Egyptian movie industry faces while enforcing their rights online, how courts might view graduated response laws, and the optimal enforcement strategy that Egypt film industry should follow while combating online piracy,

**Althaf MARSOOF, Nanyang Business School, Nanyang Technology University**

*International Intellectual Property Standards and Flexibilities: Rethinking Sri Lankan Trademark Law to Achieve better Compliance while Addressing Domestic Interests*

Sri Lanka enacted the Intellectual Property Act (IP Act) in 2003 to bring the country's domestic intellectual property (IP) laws into conformity with its international IP obligations as reflected in TRIPS. However, the manner in which some of the trademark related provisions in the IP Act have been formulated remains problematic. First, in the area of trademark registration, it appears that the provisions in the IP Act dealing with objective or absolute grounds for rejection fall short of Sri Lanka's obligations under TRIPS Arts.15:1 and 2, read with Art.6quinquies of the Paris Convention. Secondly, it appears that well known marks remain insufficiently protected in Sri Lanka, resulting in the trademark infringement provisions in the IP Act falling short of obligations under TRIPS Art.16.2 read with Art.6bis of the Paris Convention. Yet when it comes to Sri Lanka's obligations under Art.16:3 of TRIPS read with Art.6bis of the Paris Convention, Sri Lanka exceeds its expectations - both well-known and ordinary marks registered in Sri Lanka attracting protection against dilution. In essence, the trademark infringement provisions of the IP Act falls short of and exceed Sri Lanka's TRIPS obligations at the same time. Thirdly, the IP Act confers on trademark proprietors a right to "use" trademarks, which goes beyond Sri Lanka's obligations under TRIPS Art.16. Although not uncommon, the conferral of such a "positive" right of use giving rise to a TRIPS plus standard

has negatively impacted the Government's efforts in addressing domestic interests such as public health. In view of these shortcomings, the following claim is made: that the trademark-related provisions of the IP Act require rethought and reform. As a developing country, that is in need of attracting foreign investment, it is crucial for Sri Lanka to modernise and reform the trademark-related provisions of the IP Act, so that its law better complies with international norms and standards but at the same time ensures domestic interests are adequately addressed.

**Meera MATHEW, Symbiosis Law School, Noida**

*Artificial Intelligence and Rising Legal Loopholes: Need to Redefine Intellectual Property Rights*

The rising global chase on Artificial Intelligence not only poses momentous growth prospects but also several loopholes. While developing nations like India have been carving out a niche for itself in the field of Artificial Intelligence with multi-faceted laws, it still lacks a regulatory framework. Primarily there exist the ambiguities on conventional Intellectual Property legal terms such as ‘author’, ‘creator’, ‘originality’, or ‘inventiveness’. Further, whether a machine could be an author or an inventor itself is a matter of contention. Likewise, if AI engendered inventions be regarded as state of art is also not settled. As far as ownership of data is concerned there lies ambiguities on who could be the owner of the device – if the operator or the manufacturer who had programmed the device to collect and store the data. When the experts predict that AI technology will replace many humans in the next few decades with the more inventions of robots and so on, the laws pertaining to its personhood, contractual relationships, data security, and intellectual property rights lack global consensus. The intricacy occurs where AI becomes more sophisticated and completely autonomous and when it attains the liberty to make its own resolutions, it may become even more problematical to say with assurance by whom the arrangement necessary for the creation of work undertaken. The granting of citizenship to robots therefore is intimidating for the natural transfer of fundamental rights and narrowing the liabilities. To keep a track of the same, it is proposed that a legislation governing Artificial Intelligence and governance of robotic technology should be drafted, to provide clarity as to the rights and obligations of programmers and creators of Artificial Intelligence systems. Also it is the need of the hour to outline the comprehensive ethical principles to which they are essential to put up with whilst programming or creating AI and robotics systems. This paper will also look into the necessity to widen the realm of word “authorship” to incorporate both human and non-human authors. On a final note, it is proposed that it is essential to revisit the Intellectual Property Laws to bring them in consistency with the current technological expansion which are central to the future prospects.

**Preksha MENIA, Symbiosis Law School, Pune**

*Intellectual Property Right Disputes at International Level & Modes of Resolution Thereto*

Intellectual property is a well-recognised, enforced and protected by law all over the world. Intellectual property means a property which is created by intellect (mind). It is a property which is the outcome of absolute application of mind and such an outcome can be in the form of inventions, copyright and related work, symbols and logos. The whole Intellectual property channel focuses on strengthening and enriching the domain in which revolution and originality can thrive at its best. Provisions at International & National level have one goal in common that is to promote creativity and originality. These provisions acknowledge

and recognise the hard work of owner of IP by granting them the protection, exclusive rights including the right to gain commercial benefits and gives recognition for the work worldwide. Numerous Online IP Violation cases are coming up. These days a single IP work can be accessed by anyone across the world. In order to curb the exploitation and infringement of IP. There is no specific Conflict of law rules (as to jurisdiction, application of law) which can be made applicable in order to resolve the cross-border IP infringement cases. IP is territorial in nature and the rights granted in the hands of IP owner are recognised, protected and enforced no further than the national territorial boundaries. The major concern herein is to protect the rights of the IP owner all over the world and to grant remedy whenever there is a case of infringement. It is Private International Law which comes into play but there is no uniformity in Private international Law as to deal with IP cases. Both common law & civil law countries have different set of rules. At first instance, the value of IP was recognised by the Paris Convention for the protection of industrial Property. It focused on protection of Industrial Property. Secondly, it was Berne Convention which is an International Agreement which extended its protection to copyright. Both the Conventions are regulated and handled by WIPO. The aim behind creating this specialised agency was to foster and boost the creativity and to grant protection to IP worldwide. IPR's are enshrined specifically in Article 27 of historic document and by UDHR. The territorial legal framework is not exhaustive to deal with the cross-border IPR cases and are exploited internationally. Accordingly, litigation quite often involves an international element too. Jurisdictional problems can arise in infringement cases in a wide variety of different circumstances. IP and rights attached thereto have become precious commodities and are being fiercely protected. In recent years, especially during the last decade, the world has witnessed an increasing number of cross-border transactions. Companies are carrying on business in several countries and selling their goods and services to entities in multiple locations across the world. Since IP rights are country-specific, it is imperative, in a global economy, to ascertain and analyze the nature of protection afforded to IPRs in each jurisdiction.

**Debmata MONDAL, Hidayatullah National Law University**

*Interface between Blockchain Technology and Copyright: Locking Horns over Digital Content.*

The primary challenge posed by internet to copyright law is assertion of rights over content in digital space. It is difficult to identify the owner, the time and date of creation of work and the number of unauthorized usages of a work in digital form thereby putting the preliminary challenge of assertion of copyright in digital space. Therefore, copyright laws main objective of recognition of technological tools like anti-circumvention measures or digital rights management was to facilitate enforcement of rights of authors/owners in digital space as well as curb piracy. The Blockchain technology which gained popularity as digital ledger system enabling log for each transaction on a file which is verifiable and immutable, can be utilized not only to trace origin of a content and prove ownership or first use of content but also track the amount of utilization of a copyrighted work in digital space through smart contracts. Blockchain technology can even be effectively used for payment per utilization of copyrighted work through cryptocurrency system. Thus, Blockchain technology has an obvious role to play in copyright rights management but the greater question to be looked in near future is whether blockchain technology with help of smart contracts and cryptocurrency systems can render copyright law redundant in digital space. There are obvious attempts like CJ, one of the largest South Korean corporations developed a blockchain-based music copyright management, Audius has attempted in blockchain-based music streaming to avoid copyright infringement, Sony is looking forward to commercialization of its blockchain-based digital

rights management as system as service, Image Rights International has attempted artificial intelligence driven internet search for copyright enforcement over images in digital space. This paper seeks to examine the above issues like assertion of copyright, enforcement of copyright, commercialization of rights, preventive measure, etc. in light of the actual industrial usage of blockchain technology as a digital rights management option over copyrighted content in digital space.

**Helitha Novianty MUCHTAR, Faculty of Law, Universitas Padjadjaran**

*Intellectual Property Protection for Preventing Human Trafficking: the Case of Sumbanese Women and their Woven Clothes*

The province of East Nusa Tenggara is one of the regions with the highest number of cases of human trafficking in Indonesia, more than half of the victims were Sumba women. This incident occurred due to economic needs, in this article will be discussed related to improving the economy of the Sumba community through the protection of intellectual property, especially the protection of geographical indications of woven Sumbanese Tenun ikat Sumba is one craft of the Nusa Tenggara community used in worship services. The use of natural dyes in tenun ikat Sumba is an economic commodity that should be empowered to increase the economy of the Sumba community. The economic improvement of tenun ikat Sumba begins with an indication of source protection which should be given by the local government of Nusa Tenggara. This is a descriptive analytical study on the need of the local government to enforce the protection of tenun ikat Sumba through the inclusion of tenun ikat Sumba in a local government decree as a declarative effort in line with the mandate of Article 63 of Law Number 20 Year 2016 on Marks and Geographical Indications. Protection of indications of source by the local government is expected to encourage the economic progress of the local community, especially Sumba women, as well as the preservation of the culture of the local Sumba community.

**Sean O' CONNOR, Antonin Scalia Law School, George Mason University**

*Global Listener Data and Next Generation Music Production*

In a world of music production by teams informed by algorithms, listener data is quickly becoming a contested asset. Distribution platforms such as Spotify, Pandora, Amazon, and Apple have it, while record labels and artists want it. Labels in particular are watching the disruption in movies and TV, where data-rich distribution platforms such as Netflix and Amazon began producing their own content in the last few years. Some of the music platforms indeed are already moving towards label and production type services for artists. To the extent listener data really can help produce the next generation of hits around the globe, labels and artists must find a way to obtain it. Conditioning licensing of their music on access to the platform's data is one way to do this. However, compulsory licenses and other regulatory mechanisms limiting free market forces for copyright owners could tilt the playing field to the platforms. The paper explores these issues and argues that strong intellectual property rights be enforceable across major markets in Asia and elsewhere to allow markets in copyrights and data to flourish.

**Ameya PANT, DMD Advocates and Dipesh JAIN, Bombay High Court**

*Intellectual Property Right Protection and Obscenity: An Indian Perspective*

Recently, India's Patent Office had denied patent protection for a vibrator to Canadian company on the grounds of violating public morality and obscenity. Despite having wide-spread market for same, the Patent authorities based on their own assessment of what is 'moral' or 'obscene' have proceeded to deny intellectual property ('IP') protection to the invention. This merely highlights a growing issue; *i.e.* IP could be denied protection merely because the regulatory authorities tasked with enforcing the same are of the opinion that the said content/invention is 'immoral' or 'obscene'. It is well-known that there is an atmosphere of wide-spread censorship which already prevails in the artistic and literary field, leading to a whittling down of many creative expressions. However, the problem which was once an issue of 'free speech'/'broadcast' has now made its way to the realm of, whether such censored works could receive IP protection from their inception. This leads us to our larger question, whether by adopting such a regressive approach, could a case be made that India by way of such conduct is in violation of its treaty obligations under the Berne Convention and TRIPS. In light of the same, reference may be made to the Panel Report of the WTO in "China – Measures affecting the Protection and Enforcement of Intellectual Property Rights", dated 26.01.2009, wherein copyright protection was out-right denied to banned works (either owing to obscenity/hate-speech) under Article 4(1) of the Copyright law of China. In such circumstances, the Panel found China's Copyright legislation to be inconsistent with the TRIPS Agreement, as denial of IP protection to a censored work would render copyright no more than a 'phantom right'. That even though the dissemination of such censored works might be in the realm of a country's sovereign right, there could be no bar to the protection of copyright along with enforcement of such protection; and that denial of the same would amount to a clear contravention under TRIPS and the Berne Convention. In the present case, the Indian IP regulators have by their own skewed interpretation of 'morality'/'obscenity' taken it upon themselves to out-right deny IP protection, which is clearly not in line with the clear mandate under TRIPS/ the Berne Convention. Even if the international obligations are kept aside, it poses a larger question onto IP protection based on content bias. In the age where online streaming services, and consumption of IP takes place ever-increasingly on the digital space – if protection of such works is non-existent in the country in which it is being consumed, will most definitely lead to severe challenges in enforcement of IP rights in the event of an infringement. Therefore, it is our view that restrictions on free speech by way of censorship cannot extend onto protection under IP laws, as the same would deprive authors not subject to the Indian standards of 'morality'/'obscenity' any recourse to enforce their IP rights in the event of an infringement.

**Stefan PAPASTEFANOU, Bucerius Law School**

*Machine Learning in Patent Law – Legal Challenges Regarding the Term Invention and Inventor in the Context of Genetic Breeding Algorithms*

Artificial Intelligence (AI) is an interdisciplinary field of computer science with the aim of creating intelligent machine behaviour. All over the world and especially in IT-heavy industries such as the United States, the European Union, Singapore and China, machine learning has developed to be immense assets and its applications are becoming more and more significant and relevant from everyday life to high-profile economic and even military interests. By realizing the significance of machine learning, it has to be examined how such products of machine learning models can and should be protected by IP law and for the

purpose of this paper patent law specifically, since it is the closest IP law regime with regard to technical inventions and computing methods in technical applications. Genetic Breeding Models are currently less popular than Recursive Neural Network Method and Deep Learning, but this approach can be more easily described by referring to the evolution of natural organisms, and with increasing computational power, the Genetic Breeding method as a subset of the Evolutionary Algorithms Models is expected to be regaining popularity.<sup>3</sup> In addition, it is one of the oldest approaches to machine learning. Therefore, this research will focus on the arising legal problems in the context of Genetic Breeding Algorithms. Questions of the technical nature of the problem to be solved, the inventive step as such and the question of the state of the art and the associated obviousness of the solution arise in the current patenting processes. Most importantly and key focus of this paper is the problem of patenting inventions which themselves are developed through machine learning. The inventor of a patent application must be a natural person or a group of persons according to the current legal situation in most patent law regimes. In order to be considered an "inventor", a person must actually have developed part of the inventive concept. The mere application of machine learning or an AI algorithm to a particular problem should not be construed as the algorithm that contributes to a part of the inventive concept. However, when machine learning or the AI algorithm has contributed to a part of the inventive concept, there is currently a lack of clarity regarding the ownership of artificially created inventions. Since not only all European patent law.

**Shaista PEERZADA, A.K.K New Law Academy**

*Intellectual Property Rights for Innovations in Information Technology*

The initiative to encourage innovations by conferring support to Industrial development by in-cooperating Intellectual Property Laws is praiseworthy. There is a need for enforcement of IPR for innovations in Information Technology vis a vis developing countries like India. The laws and policy formulated due to rising infringement and counterfeits in the contemporary scenario questions the adequacy of the present legal enforcement system. The enforcement of IP along with dispute settlement mechanisms will help to bring strong laws in India with the growing developments in the IT industrial sector. The present scenario as to the protection of innovations in IT in the developing countries at the International level is limited, ambiguous and unfair hence a significant study is required for providing an effective legal enforcement system. Also, despite the interest of WIPO members on Enforcement of IPR and the heated debates on the subject, there is little scholarly attention to the subject. It is not yet clear how and to what extent, will manufacturers, traders and consumers benefit from the laws and policies formulated by the nations of the developing countries. For enforcement of IPR in the innovations made in IT, some objectives need to be addressed. They are; a need to reduce the crimes and disorders; E-commerce difficulties; solve more cases; improve the public's trust of law enforcement; reduce cost on litigations; improve law enforcement competencies to respond to incidents and events more effectively. This research uses the existing knowledge to draw out new situations that has reflected in the developed jurisdictions with relations to the settlement systems for the enforcement policies due to the partial integration of the market in the IT domain. The research has two key objectives, firstly to understand the specific domain area of India concerning the IT companies developing and the market that would evolve with the IP capital growth and secondly be useful for the development of the policy-making IT sector in India. To have enforcement of IPR about the innovation in IT of the developing countries, we should inculcate co-ordination to focus on the development, dissemination, and education of the laws and policies. There is a need to review the present laws and policies and analyse them for the continued applicability and effectiveness. And lastly,

there would be the formulation of new policies and laws which are followed by the developed countries, to curb the counterfeit and infringement issues, situations and incidents in the developing countries.

**Asanka PERERA, Monash Business School, Monash University**

*Realisation of Farmers' Rights in Sri Lanka: A Case Study based on Ownership and Stewardship Approaches*

The issue of farmers' rights (FRs) gained attention in international agricultural circles in the International Treaty on Plant Genetic Resources for Food and Agriculture (FAO Treaty). Article 9 of the Treaty recognises the enormous contribution that farmers and local communities have made to the conservation and development of plant genetic resources for food and agriculture (PGRFA) and identifies measures to protect and promote FRs. Many developing countries who are members of the TRIPS Agreement recognised the importance of FRs and included this right under their respective PBR laws or under a separate act. Notable example is the Indian FRs Act. Sri Lanka has no formal legal framework that recognise and realise FRs. The proposed PBR draft introduced in 2001 failed to introduce FRs and the revised draft in 2011 does not adequately protects FRs. In this presentation, I will be examining the importance of realising FRs within the Sri Lankan context. Realisation of FRs is vital to the Sri Lankan economy and society because majority of farmers in rural Sri Lanka play important role in on farm conservation and sustainable use of agrobiodiversity and fostering innovation in Sri Lanka. In recent decades, the traditional crop varieties historically grown by many rural farmers have been largely neglected in the country due to the introduction of new varieties. Hence, in order, to allow farmers to continue their role as stewards of biodiversity it is important to have a legal framework to recognise and realise FRs. Moreover, Sri Lanka is a member of both CBD and FAO Treaty and thus has international obligations to realise FRs. In this presentation, I employ the ownership and stewardship approaches as an analytical tool to examine the interest of farmers. The ownership approach focuses on rewarding farmers for their contribution to the preservation of plant genetic resources (PGR) by granting property rights to farmers on their knowledge like commercial breeders. In contrast, stewardship approach is a more comprehensive system where farmers are given 'legal space' to continue to act as stewards of biodiversity collectively and reward them for their contribution. The difference between the ownership and stewardship is that while the ownership approach emphasizes intellectual property rights for framers, the stewardship is a non-intellectual property right mechanism for the protection of farmers' varieties. During the evaluation, I will be using India as a yardstick because India is one of the few countries that protects and incentivises FRs while adopting a PBR Act. To pursue this inquiry, my methodology is to draw on studies of the needs of breeders and farmers in disciplines outside law. I shall be analysing the policy and provisions of the relevant Sri Lankan laws such as the PBR Bill, Seed Act, and New Seed Bill to see how they balance these needs. In this contribution, I show that any law that will be implemented in future to realise FRs in Sri Lanka should be based on stewardship approach.

**Aneesh V. PILLAI, Faculty of Law, Cochin University of Science and Technology**

*Interoperation of Competition Law and Intellectual Property Rights: A Comparative Study of Asian Legal Systems with Special Reference to India*

During the last few decades most of the developed and developing countries have adopted competition law for the purpose of promoting competition in the market and prevent those practices which are having an appreciable adverse effect on competition in the market. To achieve this objective the competition law enforcement agencies are charged with a duty to investigate and prevent those practices which have an anti-competitive effect. The competition law by ensuring effective competition in the market tries to establish a perfect market, which in turn ensures welfare of consumers. However, there are certain areas in which the application of competition law is still a debatable issue. One such area is that of intellectual property rights. Intellectual property rights are considered as a statutory reward for the intellectual creation of a person related to a technological, scientific, literary and artistic filed. IPR comprises of a bundle of rights for the protection and enjoyment of such rights by the inventor or creator. It allows the owners to the right to exclude others from using or commercialising the protected subject matter for a period of time. So also it allows the IPR owners an exclusive right to licence the subject matter to others for its commercialisation. Thus it can be see that, the IPR holder having exclusive control over the protected subject matter, which in turn amounts to the creation of a monopoly. Therefore it is argued that the basic objective of intellectual property rights is to create monopoly rights and their protection. In this context, it is to be noted that, the basic objective of competition law is to regulate the monopolization in the market. Thus there appears to be an apparent conflict in the philosophy of both competition law and intellectual property rights and hence it is argued that these two laws are like two poles of a magnet. Since both these laws are very essential for the welfare of consumers and the effective operation of markets, it is necessary that these two branches of law must operate hand in hand. But due to the apparent conflict in the philosophy behind the two branches, it poses a herculean challenge to policy makers in most of the countries. This paper argues that, there is no conflict between IPR and competition laws in Asian countries rather they are complementary to each other. This paper seeks to examine the interoperation of IPR and competition law in the various countries in the Asian region. It also identifies the various issues involved in dealing with the IPR by competition enforcement agencies and tries to provide pragmatic solutions for maintaining a balance.

**Deva PRASAD M., Indian Institute of Management, Kozhikode and Suchithra MENON C., Sai University, Chennai**

*Probing the Plant Variety Protection Law and Regulatory Conundrum in the Indian Context*

The Protection of Plant Varieties and Farmers' Rights (PPVFR) Act, 2001 (henceforth PPVFRA) is a unique legislation pertaining to plant variety protection in India. The PPVFRA based plant variety protection legal framework is envisaged as a sui generis mechanism balancing the interest of both plant breeders as well as the farmers. The PPVFRA was enacted as part of legislative measures to meet the compliance requirement under the Trade Related Intellectual Property Rights Agreement, 1994 (TRIPS Agreement). The Article 27 of the TRIPS Agreement has mandated for effective plant variety protection legal mechanism to be evolved at the domestic level. Rather than providing the plant variety protection exclusively to the breeders, the Indian legal system also wanted to provide the farmers fair share of their

rights. The rights vested with the farmers, pursuant to the section 39 of PPVFRA include the right to “save, use, sow, resow, exchange, share or sell” a seed variety and its produce. The exception provided in the PPVFRA is regarding the sale of branded seeds. The balancing of rights between plant breeders and farmers regarding plant variety protection have given rise to major legal battles in India. The major prolonged ongoing legal battle between Monsanto and the Indian seed companies raises the question of applicability of PPVFRA in the context of Bt cotton seeds. Monsanto claims patent over the transgenic Bt cotton seeds and argues that the PPVFRA rights will not apply as the patent right provides exclusion rights. The applicability of PPVFRA in this case where Monsanto has entered into contractual agreement with the Indian seed companies regarding sharing the Bt cotton technology to create hybrid seed throws open the complexity of intellectual property protection and tussle regarding stakeholders’ right claims. The larger question of innovation in the seed technology and farm sector is an issue that gets marred in these regulatory conundrums. Another major legal battle in India has been between the Pepsi company and the potato farmers in the state of Gujarat. The Pepsi company wanted to ensure that the plant variety protected seed of Pepsi company should not be used by the farmers for their own use. The Pepsi company also wanted to exercise exclusive right over the potato over which the plant variety right has been provided and demanded compensation from the farmers using the seeds. The major backlash from the farmer and civil society was witnessed as it was understood as a misuse of the PPVFRA law by a multi-national corporation. The question pertaining to the effectiveness of a sui-generis mechanism such as PPVFRA is analysed in the backdrop of these two important cases in the Indian context. The International Union for the Protection of New Varieties of Plants (UPOV) Convention, 1991 would be analysed to understand how the PPVFRA provides a larger public interest based argument for protection for farmers. The various legal options to bring an effective solution to the existing regulatory confusion and absence of coherence in the plant variety protection would be thoroughly discussed in this paper.

**Prasetyo Hadi PURWANDOKO, Faculty of Law, Sebelas Maret University Surakarta**

*The Implementation of the Protection of Traditional Culture Expression (TCE) in Indonesia Based on Article 38 Law Number 28 of 2014 Regarding Copyright*

Indonesia as a multicultural and multi-ethnicity country has wide EBT as the cultural heritage that needs active protection in order to protect it from extinction and economic benefits. However, there is a lot of elements that are endangered due to the effect of globalization and lacks facilities, appreciation, and comprehension that may lead to the erosion of values, functions, and cultural elements. In this present paper, we discuss the implementation of EBT protection in Indonesia based on Article 38 Law Number 28 of 2014 concerning Copyright (Copyright Law 2014). We conclude that the implementation of TCE protection in Indonesia based on Article 38 of the Law Number 28 of 2014 concerning Copyright is through the Draft of Governmental Decree concerning TCE as the implementation of the Law Number 28 of 2014 concerning Copyright. Even though the draft government regulation has yet to be promulgated.

**Piergiuseppe PUSCEDDU, Tilburg Law and Economics Centre, The University of Tilburg**

*The Use of Arbitration to Settle FRAND Disputes, with Focus on China.*

Arbitration, as an alternative to litigation, is meant to settle disputes promptly, efficiently, and confidentially. As such, it is widely relied on in several business relationships across different industries, such as construction, energy, finance, real estate and technology. Accordingly, several areas of law are interested, including IP, and patent in particular. When faced with technology-related transactions, practitioners must be aware of the existence of standard-essential patents and licensing commitments according to FRAND terms. This latter instance, in particular, has been object of litigation in many jurisdictions, including China. Against this backdrop, Arbitration of FRAND disputes has received less attention in academic literature. Based on this consideration, the scope of this paper is to inquiry whether arbitration of FRAND disputes would be a feasible option, when a Chinese counterparty is involved. Two aspects will be considered: arbitrability and enforcement of foreign arbitral awards. The paper is organized as follows. Part I introduces the problem and discusses the peculiarities of FRAND arbitration. Part II discusses the current developments on FRAND arbitration's institutionalization. Part III discusses IP disputes' arbitrability in China. Part IV discusses the recognition and enforcement of foreign arbitral awards in China, and what challenges may exist for foreign arbitral awards deciding a FRAND dispute. Part V concludes.

**Ria Wierma PUTRI, Faculty of Law, University of Lampung**

*Geographical Indication Practice in Lampung Province: Case of Lampung Robusta Coffee*

The geographical indication (GIs) was promoted as a tool to reach the niche market (internationally) for the distinctive geographical linked product in Indonesia. But before the GIs acclaimed successfulness in regional and international market more over in free trade era, it should be well prepared, managed and strengthen in local and national level. As GIs include in the strategic goals of ASEAN Intellectual Property Rights Action Plans 2016-2025, it was followed by the promulgation of the new law of geographical indication and the decision that "2018 as the geographical indication year" in Indonesia. As of January 2019, Indonesia has 66-Registered GIs took third place in ASEAN. Lampung has two registered GIs which are Lampung Robusta Coffee (2013) and Lampung Black Paper (2015) even though the products are famous, but that popularity is not linked-to and elevated-by the GIs certificate. While, as promised, the GIs certificate will give law protection and boost the economic value benefit directly to the original community farmers. Therefore, they registered their products, although it is costly. However, in Lampung between the aim and the fact create the gap which the factual situation now that GIs certificate may deliver legal protection but may not increase the economic value since it was registered. It is ironic because of Lampung is the biggest exporter of Robusta coffee and black pepper in Indonesia. This research tries to find the cause of the uncertainty of the GIs successful practice in Lampung Province. Using literature data, in-depth interview with stakeholders, and field observation in Bandar Lampung and West Lampung District. The research found that the GIs certification seemingly treated as finished after registered, the unwell organize coordination between stakeholders, the concept of GIs is not well understood, the inconsistency of GIs Association management and no future planning of registered GIs.

**Ziyan QIU, Graduate School of Law, Nagoya University**

*Reconsidering the Territoriality Principle in the Context of Transnational Divided Infringement*

Generally, patent law has been narrowly interpreted to apply with no extraterritorial effect. Likewise, a patent granted in one country is enforceable only within that country and does not protect against acts beyond the territorial boundary. Nevertheless, the traditional territorial principle in patent law has constantly been challenged in an age of globalism when tangible goods frequently transcend national borders. There has long been a shift towards expanding patent law to incorporate international activities. For proof of this, consider Article 271(f) in US patent law and Article 28(1)(b) in TRIPS Agreement. Moreover, the advancement of new technologies involving computer and telecommunication networks along with the expansion of subject matter to cover intangible inventions, especially business methods, has imposed another challenge. Unlike traditional inventions, network related inventions are, by their very nature, geographically discrete, of which typical infringing scenarios include where some components of a patented system are utilised, or several steps in a patented process are implemented in different jurisdictions. The aforementioned transnational divided infringement situations are difficult to tackle with in that, even with patents acquired in each relevant country, no infringement can be found when the territorial principle is applied rigidly. As shown in *NTP v. Research In Motion* Litigation, US courts struggled with addressing this issue and ended up in treating patented systems and patented methods in varied ways. Meanwhile, in light of an obiter dictum made by Tokyo District court<sup>2</sup>, Japanese courts are reluctant to give patent law an extraterritorial effect. In China, no relevant case has been found. With the advent of network related inventions, the location of conduct no longer functions as a useful factor to determine applicable law in cross-border scenarios. Therefore, reconsideration of the territoriality principle is indispensable for protecting network related invention. Absent a clear provision explicating the territoriality principle, ambiguity exists concerning both its meaning and basis. This has further led to a wide divergence of opinion, as to when the extraterritorial application of patent law should be allowed and how such application should be accomplished. By reviewing the laws and cases in China, Japan and US, this article aims at offering to a flexible interpretation of territorial principle to pave the way for protecting network related inventions. Firstly, re-examine international treaties and national laws to make clear the meaning and basis of the territorial principle. Secondly, find out how the principle has influenced judicial practices by case study so as to prove the necessity of softening this principle. Finally, after assessing proposals on expanding the scope of territoriality principle, advice will be given from legislative and judicial perspective.

**Laina RAFIANTI, Faculty of Law, Universitas Padjadjaran**

*Intellectual Property and Digital Economy Aspects after the UNESCO Intangible Cultural Heritage: Case Study of Angklung Inscription from Indonesia*

UNESCO, as an organization deals with the educational, scientific and cultural subject matter, have a capacity to inscribe the Intangible Cultural Heritage. The inscription functions are to identify the original place of cultural heritage, define the rights of the State to hold and determine the obligation of the State to manage cultural heritage. Regarding the intellectual property subject matter, particularly copyright in Indonesia, exists provisions on Traditional Cultural Expressions which regulate the same object as Intangible Cultural Heritage. After UNESCO inscription of Angklung as Intangible Cultural Heritage, the

problem on intellectual protection still occurs. There is a lack of exclusivity utilization of Angklung; moreover, the usage of Angklung plays has become more extensive. Moreover, industrial revolution 4.0 gives an impact of digital disruption that allows possibilities of the promotion of Angklung and its derivative creations. This phenomenon becomes a background of the following legal issues: Firstly, how is the intellectual property protection of the inscription of Angklung as Intangible Cultural Heritage under UNESCO? Secondly, how does digital economy aspects in the utilization of Angklung and its derivatives creations? Theory of communal intellectual property which lead to cultural rights approach will be used in this paper. Meanwhile, to analyse the second issues, the doctrine of the digital economy will be more elaborated.

**Mas RAHMAH, Faculty of Law, Universiats Airlangga**

*Imposing Disclosure of Origin for Requirement of Patent Registration: Challenges for Implementation*

The paper reviews the mandatory disclosure of origin requirements in Indonesian Patent Act of 2016 which imposes applicants who seek patent for an invention related to or originated from genetic resources or traditional knowledge to mention clearly and correctly the origin of genetic resources or knowledge traditional in their patent descriptions. The paper acknowledges that although the measures of disclosure of origin has been introduced in the Patent Act, they still raise critical questions for all the actors and elements involved, including uncertainty about the standard, mechanism, further requirements, penalties for noncompliance, certificates of such disclosure or compliance, institution that authorizes to handle the implementation of requirement of disclosure of origin. This paper recognizes the problems of implementing the provisions at normative and practical level. The normative challenge may arise since the provision needs further regulations to implement the disclosure of origin for patent requirements. At practical level, the problem of follow-up mechanisms and institutional framework remains unclear and questionable. Thus, the paper advises that developing further legislative and the institutional framework on disclosure of origin will be the strategic solutions for addressing those problems.

**Mohammad Ata-ur RAHMAN and Owais SHAIKH, Department of Law, Shaheed Zulfiqar Ali Bhutto University of Law**

*Protecting Pharmaceutical Patents in Pakistan*

The United States Trade Representative issues its Special 301 Report every year since 1989. Therein, it presents the state of affairs with regard to intellectual property protection within the jurisdictions of its various trading partners. Since the very beginning, Pakistan has been on one of the two lists of the Report. In many instances, lack of appropriate protection of pharmaceutical patents was cited as one of the key reasons for inclusion of Pakistan on the lists. The US also initiated a WTO complaint against Pakistan for alleged lack of appropriate protection of pharmaceutical patents in line with the provisions of the TRIPS Agreement which was later settled by the parties and a new Patent law was introduced in Pakistan. This paper attempts to investigate this allegation by analyzing the jurisprudence developed by Pakistani superior judiciary starting from the late 1980s when the first pharmaceutical patent case was reported till now. It finds ample evidence that the Pakistani courts have been consistently supportive of patent protection of pharmaceutical products from the very beginning where they went at painful length to justify protection of

product patents even when the laws did not provide the same. In nearly all the claims that were brought by multinational pharmaceuticals against infringement the court favored the plaintiff & either enjoined violation of the patent or awarded legal compensation. The recent court decisions are also supportive of the rights of the patent holders, albeit now the decisions are more in line with the statutory provisions in the patent laws of Pakistan. In addition, the paper also looks at the patent applications filed in Pakistan between 2005 and 2018 to assess whether the pharmaceutical patent applications filed in Pakistan have been unduly delayed in examination and in grant as compared to applications from other fields. The dataset is unique in the sense this paper is the first ever to analyze patent applications filed in Pakistan to gain specific insights.

**Mamta RANA, Vaishali SINGH & G. N. SINHA, School of Law, University of Petroleum and Energy Studies**

*Assimilating Gene Editing (A)evolution: Cutting Edges and Weaving Threads*

Modern biotechnology has a great potential for human well-being if developed and used with adequate safety measures for the environment and human health. By modern technology is meant the application of *in vitro* nucleic acid techniques, including DNA and direct injection of nucleic acid into cells or organelles, or fusion of cells beyond the taxonomic family, that overcomes the natural, physiological, reproductive or recombination barriers and that are not techniques used in traditional breeding and selection. Recent advances in innovative technologies have ushered a new era of biological therapeutics. Among these Gene-editing technologies, such as CRISPR/Cas9, evokes strong reactions, both for and against. Even globally, a consensus has not been possible. Often the negative perceptions have not been based on sound scientific evidences, but the fact remains that the general public can easily be led on this path. This foundational technology has a capacity to alter the genes of a human embryo, potentially removing all the genetic defects and introducing new characteristics. This brings to the focus to adapt rules and produce adequate regulations concerns genetic editing which could be passed from one generation to the other. The legal framework in various jurisdictions is diverse, taking into consideration the vast differences in social, cultural and moral norms. It is nonetheless important to see the legal and regulatory framework in India. First the researchers, brings to light certain social, ethical and religious concerns surrounding gene editing that act as a roadblock for science. Then, the researchers discuss multitude of intellectual property right issues that could pose a question such as whether a human gene is patentable. A gene patent is the exclusive rights to a specific sequence of DNA (a gene) given by a government to the individual, organization, or corporation who claims to have first identified the gene. Once granted a gene patent, the holder of the patent dictates how the gene can be used, in both commercial settings, such as clinical genetic testing, and in non-commercial settings, including research. The investigative study aims, to find out as to where in the priority list does CRISPR stand in context of public health in India and to investigate the lack of adequate legislative framework for regulation of gene editing in India.

**Yessi Serena RANGKUTI, Faculty of Law, Universitas Sumatera Utara**

*Supporting Local Fashion Brand as a Solution to Strengthen Indonesia's Enforcement in Intellectual Property Right*

In globalization, there are innovations in what we do for living. Instead getting employed in offices, the young generations prefer to create their own business and employment to also provide solution for unemployment. Being creative and innovative is crucial in the business world for the existence of the business, but not every businessman run his business in 'healthy way' many choose 'shortcut' in running their business. When the businessman has no sufficient creativeness and innovation in competing environment of business, faking a popular-brand product has become the option to keep the sale on going. In Indonesian term, it is called 'KW' product. This KW product has become the specter for the businessman with top and world-wide popular brand who already has existence and popularity. Society with lower income would be tempted in purchasing the fake products of the top brands since it its cheaper. Regulation regarding copyright which has been issued by Indonesian government is one of the ways in preventing this issue from developing further. *Global Innovation Policy Center/ GIPC* of *U.S. Chamber of Commerce* has judged South-East Asia as a competitive area in implementing Intellectual Property Right Protection according to the index of Intellectual Property Right in GIPC research with the title of "Create", Singapura has led South East Asia, ranking in the 9<sup>th</sup> place from 50 countries. Malaysia is in the next line, in the 22<sup>nd</sup> position, followed by Brunei Darussalam in the 35<sup>th</sup>, Philippines in 38<sup>th</sup> Vietnam in 40<sup>TH</sup>, and Indonesia in the 43<sup>rd</sup>. Indonesia, Thailand, and Vietnam, are still fighting in running the long-term plan in strengthening the coordination between each institution regarding Intellectual Property Right implementation. One of the ways to prevent Intellectual Property Right violation in Indonesia is by supporting local brands, especially in fashion. There are many local brands in fashion which already popular and has thousands of customers already. This can be seen easily today especially with many helpful social media such as Instagram. The development of local fashion brands supported with the pride in local brands will in time, prevent Indonesian society from violating Intellectual Property Right. The stigma of the quality of international brand (especially Western brand) is better than local brand must be stopped. Government should really consider to fully support the local brand in any way for this purpose, especially by creating proper legislation and annual event of local brand to be able to compete with the International brand, and to raise the pride of Indonesian fashion local brand.

**Dilan Tharindu RATHNAYAKE, University of Sri Jayewardenepura**

*Copyright Information Visibility and Copyright Awareness in Social Media: Empirical Evidence from Sri Lanka*

Web 2.0 can be identified as web services, preciously facilitated by various software, which rely on the interaction of many users. The uniqueness of these web platforms is that participants can contribute as both contributors and users of the service itself, to provide the optimal level of service. Emergence of Web 2.0 technologies paved the way for immense popularity of Social media across the globe and participation of Social media has become a habit embedded with the life styles of people. Massive changes in Information Technology has further enabled Social Networking Sites (SNS) to integrate in the daily lives of people in the world more actively than ever before in the past. These sites, reportedly have contributed to the increasing numbers of contacts between users sharing common interests and to the creation of online

communities and digital social networks. However, in a context where the same user becomes both a contributor and a co-developer, inevitably, the user tends to build the network using the work created by others. Thus, copyright issues come into play in such a context where a greater possibility is there for the participants of social media sites to use other's work without proper credit and even without permission. It can be suspected that such incidents may occur due to the less visibility of copyright information and less awareness of users about copyrights. Hence, the aim of this paper is to explore social media copyright information visibility and copyright awareness among Sri Lankan social media users. In Sri Lankan context, most of social media users tend to share unnecessary contents, infringe copyrights, defamation and online harassment which have drawn recent attention as intellectual property issues on social media. It is the issue of handling social media, which brings a whole new area of the freedom of expression and the rights of internet users into the considerations of politics and government. Sri Lankan government already established Intellectual Property Act, No. 36 of 2003 for deal primarily with copyright and related rights and Computer Crime Act, No. 24 of 2007 for deal with computer related crimes and hacking offences. Specially, Intellectual Property Act, No. 36 of 2003 directly deals with copyright of audiovisual works, authorships, broadcasting, collective works, and computer programmes, etc., however, the awareness of such regulations remains questionable. To this end, a qualitative investigation was conducted by taking a sample of 25 Sri Lankan social media users. Data was collected through in-depth interviews which were thematically analyzed. Findings of the study revealed that copyright information visibility in social media platforms is at a low level, as a result, copyright awareness among Sri Lankan social media users remains at a poor level. The users seem to rarely acknowledge and give credit to the original author of certain contents in social media and apparently they possess less knowledge on the consequences of copyright violations. Thus, the study suggests policy makers to take necessary initiatives to enhance the level of copyright awareness among social network users and develop programmes to increase the copyright visibility in social media.

**M. SAKTHIVEL, School of Law and Legal Studies, Guru Gobind Singh Indraprastha University**

*Taxation of IP Assets in India: Need for a Rational Approach?*

Growing consensus on the importance of innovation across the globe is important for an evolving competitive global market. The direct corollary of this is that business entities are pushing for a relatively larger investment in their R&D segment to survive in the longer run. The idea being that an innovative product can help a business entity to tap into the unexploited potential of the global market. This is where the role of intellectual property right (IPR) comes into the picture, if the tangible results arising out of R&D qualifies to be an element of intellectual property, then the business entity may have an exclusive and monopolistic control over the market, at least for a limited period of time. This situation would help the business entity to earn handsome profits and recoup its investments on R&D, the existence of profits invokes the provisions of taxation laws. Until mid 2017, it was quite possible for an Indian business entity that it may be taxed under different categories such as : Income Tax, Service Tax, Sales Tax, Customs Duty, Excise Duty, R&D Cess. However, with the introduction of GST which has subsumed some of the above referred forms of indirect taxes, takes away numerous anomalies of the previous system with respect to the transactions involving IPRs of a business entity. In India, one of the biggest barriers towards the acceptance of IP is the high cost of entry associated with it. Even, the process of acquiring an IP teeters through multiple stages including a complicated application of taxation process ranging from income-tax to GST. India's unique socio-cultural-economic situation with its rich history of traditional knowledge

presents a different set of challenges for IP policy makers. The country has to develop an indigenous intellectual policy with respect to taxation of IP assets. This should translate into a preferential treatment of taxation of IP assets keeping in mind the interests of the native people, this should be tailor-made to spur creativity and inventiveness especially among the Small and Medium Enterprises (SMEs). Thus, the requirement of having a simple and creator friendly taxation regime for the smooth facilitation of creation of IP becomes an inevitable one. Further, having a highly complex taxation regime for the technology transfer, would not encourage rather it would encumber the IP assets transfer. The existing Indian transfer pricing policy and international taxation policy further complicate the IPR transfer for the economic realization. Therefore, in this context, the research work critically examines the existing Indian taxation policy towards IP assets and advocates for having a rational approach towards taxation of IP assets to create a conducive creative environment for the economic development of nation.

**Niharika SALAR, Faculty of Law, National University of Singapore**

*Critical Analysis of Development of Passing Off Jurisprudence in Celebrities: An Indian Perspective*

Law of Passing off in India is a tort actionable under common law and essentially used to protect the goodwill attached with the unregistered trademarks. It is founded on the basic tenet of law that one should not benefit from the labour of another. Under a passing off action, establishing goodwill and harm caused or possible harm that could be caused to the goodwill is a major ingredient. An unregistered trademark thus has a higher burden than a registered trademark. Indian celebrities have started using the tort of passing off to sue infringers who desire undue advantage of the said celebrity's popularity.

Allowing unregistered trademarks a certain extent of protection under the Act is a relief to many users who otherwise wouldn't have been able to get any sort of legal remedy for the violation of their marks and even reputation. Because celebrities have to show the presence of their goodwill and reputation in the public eye, it can be a difficult task to understand the nuances of applicability of passing off remedy to celebrity reputation. Therefore in conclusion, the proposed presentation at the esteemed Conference would attempt to decode the jurisprudence of tort of passing off in India and how it has been utilised by celebrities in protecting their reputation.

**Shahrina Anis SAMSUDIN, Faculty of Law, Universiti Kebangsaan Malaysia**

*Legal Protection of Indigenous Design in Malaysia: Combination of Laws or Sui Generis?*

Various Indigenous communities contribute to the abundant of Traditional Cultural Expressions (TCEs) in Malaysia. With the increase of global demand for ethnic or Indigenous-based products, many of the TCEs have been commercially exploited, misappropriated, and treated derogatorily by outsiders. The Indigenous communities are also not being attributed to their TCEs. These actions are left unactionable due to the inadequacy and loophole in the Malaysian Intellectual Property (IP) and heritage law in providing legal protection to the TCEs. This current study will analyse the possibilities of protecting Indigenous designs either by extending the protection under the IP law, combined usage of IP and heritage laws, or to develop a *sui generis* law. This study will use the design of Pua Kumbu (hand -woven textile) and the tribal tattoo belonging to the Iban communities in Sarawak, Malaysia as a case study. Data will be collected from primary and secondary sources, where interviews will also be conducted with four groups of respondents

comprising of the Pua Kumbu weavers and the tribal tattoo artists, parties that are involved with the making and enforcement of the law and policy of IP and heritage law, organizations that are involved in the effort of protecting the Iban's Pua Kumbu and tribal tattoo design, and parties that commercialise the design of Iban's Pua Kumbu and tribal tattoo. The result is expected to provide inputs in term of the improvement of the current legal framework that will provide commercial benefits and contribute to the sustainability of the TCEs of the Indigenous communities, its spiritual and cultural significance, and the designs are being attributed to the Iban communities.

### **Kanikaram SATYANARAYANA, Indian Council of Medical Research**

#### *Access to Affordable Health Care: Some Strategies to Overcome IP and other Barriers to Promote Access to Biosimilars with Focus on Developing Countries*

Biopharmaceutical drugs are therapeutically highly selective, offering effective treatments against dreaded diseases with fewer side effects. Biotherapeutics currently benefit about 350 million patients and for over 200 diseases like cancer, diabetes, hepatitis C, chronic renal failure, rheumatoid arthritis etc. But biotherapeutics are prohibitively expensive costing on an average 20-30 times the traditional chemical drugs. Herceptin, a common breast cancer drug, costs upwards of \$48,000 - about 10 years of average annual wages in India and South Africa and 1.7 years in the US. Both cancers and diabetes are on the rise - in 2018 cancer patients number 18.1 million with 9.6 million deaths while one in ten people in most countries is a diabetic. Cost factor deprives most needy of the treatment. Similar biotherapeutic products/biosimilars, similar in terms of quality, safety and efficacy to an already licensed reference biotherapeutic product, is a viable option. Biosimilars cost a fraction of the original product with an equal treatment efficacy. A biosimilar Exemptia marketed by Cadila, an Indian company costs US \$200 a vial - 20% of Humira. They bring down cost of health care - an estimated savings of over Americans \$71 billion and in Europe over €33.4 billion by 2020. Access to biosimilars is therefore critical. There are two main barriers that impact access: i) IP rights and ii) unduly complex regulatory framework. Main IP issues include i) patent evergreening; ii) filing multiple divisional applications; iii) patent linkage; iv) data exclusivity; and v) patent dance. Patent evergreening refers to different ways wherein patent owners take undue advantage of the law and associated regulatory processes to unjustly prolong the patent monopoly of existing products. A divisional application is filed to divide a patent application (known as the parent application) into two or more applications. Patent linkage is a system or process by which a country links drug marketing approval to the status of the patents corresponding to the originator's product. Data protection/ Data exclusivity refers to protection of data on preclinical and clinical trials submitted to regulatory authorities to be able to approve and certify that a pharmaceutical technology is safe and effective for consumer use before market entry. Finally, Patent Dance, unique to biosimilars, is a procedure envisaging exchange of information and data between the biosimilar applicant and the innovator company with a strict time limit after submission of applicant for marketing approval by the biosimilar company in the US. Compounding the complex and messy patent landscape of biologicals including biosimilars, some emerging companies hold process patents for innovator biologics whose impact is as yet unclear. Some strategies to overcome these IP barriers by the Indian model to promote access to biosimilars in developing countries will be discussed.

**Riccardo VECCELIO SEGATE, Faculty of Law, University of Macau**

*Ownership and Copyright of Algorithms' End-products in the EU: How to Cope with Profit Allocation and Artistic Overrepresentation?*

Besides the open dilemma of whether algorithms per se are copyrightable or patentable, a most recent problem bearing potentially disrupting implications lies with those algorithms which are able—or to be precise, enabled—to “create art” (mostly digital one, yet not exclusively so) after being instructed on how to proceed and being provided with big data to draw from via pattern reproduction. Against this background, my contribution rather focuses on the copyright aspects of this revolution. When computer programs merely execute the intellectual and artisanal instruction of art workers, the outcome of such instructions is obviously—when applicable—copyrighted by the artist; however, once a computer has “learned the lesson” starting from the instructions, thus becoming (semi-)independent—what is labelled “machine learning”—, then copyright attribution becomes way more problematic. Indeed, in a futuristic (and dystopian) future, computers will perhaps be granted quasi-human status under domestic (and possibly international) law, prompting the redistribution of the rents acquired by for-profit organisations recruiting the most talented programmers and... programs. However, till such a scenario comes true, most jurisdictions recognise only human creations as copyrightable (and human inventions as patentable). To face the novelty brought about by artificial-intelligence-generated artworks, two main legal stances have been adopted in jurisdictions worldwide: that still, only direct human beings' creations can be protected as intellectual property; or that whatever creation, even mediated ones which are stemming from machines' “creativity”, is worthy of protection. This second option triggers the further complication of whether the copyright should be then assigned to the creator (i.e. the author of the algorithm, the algorithm programmer) or the user (which finalises, “operationalises” the way algorithms instructions are employed to reach the “creative” result). The current mainstream approach is to keep the option (human creations vs. whomever creation) currently available under the laws of each jurisdiction, whilst leaving the eventual creator/user choice to the determination of the relevant judiciary on a case-by-case basis. As such, to summarise, there are at the moment three legal approaches to AI-generated artworks' copyrightability: 1) the artworks are not copyrightable because only humans can produce copyrightable art; 2) the artworks are copyrightable and the copyright should shift to the AI's programmer; and 3) the artworks are copyrightable and the copyright should be attributed to the AI's user. Regarding the choice for option 2 or 3, economic and legal preferences might prioritise different aspects: economists will give prominence to the incentive to innovate (market rationale), whereas instead lawyers will tend to endorse the importance of exercising rightful apportionment of “creative merit” and credits for the inventiveness (value judgement); these attitudes towards the same matter obviously call into question broader conceptual enigmas on creative thinking, identity, and personality as they should be addressed in disciplines such as law or economics. Overall, it seems fair to observe that when the algorithm itself is not copyrightable, the algorithm's creator should at least retain the copyright over the work produced by the algorithm; and if the outcome is not copyrightable, who actually owns it? Specular questions have been posed about patents, the aim remaining that of stimulating innovation while distributing rewards fairly. Also, one may consider the case of popular music as the paradigmatic example of a true conceptual revolution triggered by AI-generated art. A long-standing grievance about algorithms' bias has been raised with regards to their row data underrepresenting minorities and other marginalised social groups, who end up being further sidestepped and discriminated. In the case of AI-generated music, exactly the reverse may prove true. The trendiest pop artists whose songs are selected to “train” machines on what “music” is and how new songs should roughly sound like, could find that their market—already overcrowded and filled with endless junk low-quality proposals—is

trashed even more due to computer-generated themes. Not only: gatherings those songs for commercial purposes might violate copyright, both by processing the songs to train the algorithm, and through the algorithm's (re)creation of a song which potentially too closely resembles elements and motives from the original songs. (A couple of parameters are worth being assessed here: the actual degree of originality of the "input songs", and the coefficient of diversity of the "output" ones.) My contribution will examine all arguments in defence of the legality of this operation, arguing that original-songs-related copyright is not infringed whenever the algorithm's author cannot claim in turn copyright over the products of the machine learning's skills. Ratione loci, the analysis will be situated in the European Union. Therefore, not only the relevant legislation, case-law, and even legal philosophy underpinning key Member States will be scrutinised, but emphasis will be placed upon the lacunas displayed by the 2019 "Directive on Copyright in the Digital Single Market", and suggestions on how to fill those lacunas will be provided. This will be pursued by bearing in mind the intersections between IP rights, competition law and human rights; for example, potential IP-wise unfair competition comes into play whenever human beings find themselves in competition with machines other human beings take advantage of, within the same creative industry. Since computer-elaborated "works of art" are not always necessarily distinguishable—and will be even less so as time goes by and ICT "progress" unfolds—from those emanating from the creativity and labour of a human being, forgery and other frauds should also be addressed by the law preventively; this is to try to disappoint the usual adage expecting legislation to come permanently late due to its inability to keep pace with technological developments and scientific research. As EU's main competitor, China, is leading the way in AI-generated products ("creative" works among them), it is essential that the EU agrees upon all necessary regulatory compromises on this dossier (also aided by "Brexit", which will make reaching a deal with the UK—and its legal system, far from the continental roots—no longer needed).

**Mayuree SENGUPTA, Indian Institute of Management, Kashipur**

*IP as an Indicator of Innovation: A Review*

This piece consolidates the state of academic research on Intellectual Property (IP henceforth), especially patents as an indicator of innovation. Based on a review of extant literature, various worldwide research perspectives have been appraised into a comprehensive frame elucidating the advantages and disadvantages of IP as an indicator. 'Innovation' can be characterized as an iterative process initiated by the perception of a new market and/or new service opportunity for a technology based invention which leads to development, production, and marketing tasks striving for the commercial success of the invention. 'Invention' refers to a new product or process involving an inventive step and capable of industrial application.' Innovation capability is a significant indicator of firm performance. To evaluate innovation, identification of innovation indicators is quintessential. Patent has long been recognized as an indicator of innovation. Patentability requirement envisages a minimal threshold an innovation has to cross before it can be granted a patent. However, it would be prudent to note that limitation of patent as an indicator lies in the fact that not all patents represent innovation, nor are all innovations patented.

**Rasheed SHAIK, A.K.K.New Law Academy**

*The Role of Biological Diversity, Traditional Knowledge and Intellectual Property Rights*

The role of biological diversity and traditional knowledge concerning intellectual property laws have worked to preserve, safeguard and rightly used for the innovations made in food and agriculture, the environment, including traditional medicines and many aspects related to trade and economic development. In the search for new pharmaceutical, biotechnological or agricultural products, two different but closely related components have to be distinguished: the use of a tangible element, biological material, and the appropriation of an intangible component, traditional knowledge. The WIPO (World Intellectual Property Organization) takes the view that the term traditional knowledge refers to both tangible and non-tangible components: the tangible component of traditional knowledge mainly refers to genetic resources, whereas the intangible component of traditional knowledge mainly refers to the knowledge (WIPO, 2001). Because of the differing applicable Intellectual Property regimes, it is better not to plug the notion of biodiversity into the notion of traditional knowledge, but to address them as two closely related, but different concepts. The term traditional knowledge is understood to comprise both aesthetic and useful elements, as well as literary, artistic or scientific creations. Consequently, categories of traditional knowledge include, expressions of folklore in the form of music, dance, song, handicrafts, designs, stories, and artwork; elements of language; agricultural knowledge; medicinal knowledge (WIPO, 2001; Leistner, 2004). De Carvalho (1999, 2003) Several provider countries have established national laws and regulations to control the access to their genetic resources. In many cases, laws prescribe that contractual arrangements are the legal instrument to regulate access to genetic resources. These so-called material transfer agreements are conceived in a variety of forms and deal with a wide scale of issues (also see Tobin, 2002; Putterman, 1996). Frequently, the modalities of access to genetic resources and the use of traditional knowledge are negotiated in the same contract. Agreements have great potential in establishing access and equitable sharing. However, well-balanced contracts might remain beyond the reach of provider countries lacking necessary negotiation skills. The legal protection of biodiversity and traditional knowledge and the equitable sharing of their benefits have gained wide concern in civil society. It has triggered stakeholders, government officials, politicians, academicians and scholars to screen various existing instruments and to develop new lines of thought. The debate on the protection of biodiversity and traditional knowledge and the right tools is by far not over yet. The proposed tools are still in an embryonic state and show all the symptoms of law in making. Whenever possible, all tools can and should be used in addition to one another: IP instruments and non-IP instruments, legally binding instruments, and nonbinding instruments. The efficacy's to protect biodiversity and traditional knowledge will depend on many complementary instruments: IP related tools and non-IP related instruments (Cottier and Panizzon, 2004). Hence, an attempt should be made to challenge current legal thinking and open up some theories for new applications.

**Ajay K SHARMA, Rajiv Gandhi School of Intellectual Property Law, Indian Institute of Technology, Kharagpur (co-author Dipa Dube)**

*Criminal Law Enforcement in Counterfeit and Piracy to Benefit Innovations and Protect IP:*

Intellectual property rights (IPRs) have been enacted to protect the moral and economic rights of the creators in the scientific, artistic and industrial fields, in addition to the creativity and dissemination of their work. The justification for the emergence of IP is the 'exclusive right' of the creator to be acknowledged.

Unfortunately, however, as the domain of 'protective intellectualism' has widened, so also the incidents of willful violations and infringements. The terms, "Counterfeit" describes fake goods, and "Piracy" describes the act of reproducing any copyrighted works without permission from the copyright owner. Today every country experiences widespread counterfeit and piracy of Intellectual Property, detrimental to its economic growth. IP rights cannot succeed in their core economic function of 'incentivizing innovation' if these rights are disregarded or are too expensive to enforce. Ineffective rights regimes are worse than no rights at all. This is where the government action is required, to stand right behind the creators, innovators and businesses so as to nurture innovation, encourage investment and most importantly, to prevent and penalize violations stringently, to protect IP and encourage innovations. The present research analyses Firstly, the application of criminal law in the realm of intellectual property violations, especially counterfeit and piracy and Secondly, the impact of criminal enforcement as a benefit to innovation and IP protection. A comparative perspective will be taken to understand the position of India vis-à-vis developed IP regimes like the US and UK, and thereby identify the gaps in the existing laws. The enforcement of criminal law is the next area of inquiry where the research will try to appreciate enforcement of the law in piracy and counterfeiting, including the roles of government agencies.

**Aparna SHARMA, School of Humanities and Social Sciences, Indian Institute of Technology, Indore**

*Effects of Technological Capabilities and Technological Distance on Foreign Patenting: A Cross Country Study*

The IP research focused on technology diffusion has moved towards finding out the factors responsible for the inventor's decision to patent abroad. Literature says that countries with a less technological gap (distance) have more intense technology diffusion (Caniels and Verspagen, 2001; Geronikolaou and Mourmouris, 2015). One of the major channels of technology diffusion is technology trade or foreign patenting (Eaton and Kortum, 1999) in other words. It is an export of patent applications from source (home) country to destination (host) country. There are two trails of literature focused on factors determining foreign patenting. First trail argued that imitation risk is the major factor on which the decision to patent in a foreign country depends (Eaton and Kortum 1996). Second trail believes that the decision to patent abroad is linked with the export and intellectual property rights protection framework of the destination country (Smith, 1999; 2001). Our study adopts an augmented gravity model approach to examine the factors determining foreign patenting. It also examines the significance of technological distance geographical distance to technology trade (the inflow and outflow of technology) on sample of 36 countries for the period 2001 to 2015. We construct a technology index (Westphal, Kritayakirana, Petchsuwan, Sutabutr, and Yuthavong, 1990; Wignaraja, 2012) based on technology-related variables. The difference of technology index reveals the technological distance between two countries. We take non-resident patent of each country to capture the technology inflow and patent filed by resident country to rest of the county to capture the technology outflow. It also aims to explain the decision to patent abroad based on the assumption that imitation risks do matter concerning the higher absorptive capacity of the host country. If the technological gap (technology distance) is narrow between the home and the host country, the absorptive capacity of the host country for the knowledge created in the home country is high. Our empirical estimations are based on the full sample for all countries and a group-based analysis of "high income" and "middle income" countries using panel data methodology. The income-based categorization in this study follows World Bank definition. We quantify our hypothesis in the following way: narrow technological distance implies higher absorptive capacity of the destination country which leads to high

imitation risks for the patentee that results in more foreign patenting from home to host country. In particular, where the imitation risk has a positive impact on the decision to patent in a foreign country, the impacts will more positive the higher the level of absorptive capacity of the host country.

**Dilip SHARMA, ICAI Law School, Hyderabad**

*Revisiting Intellectual Property Paradigm in the Era of Artificial Intelligence*

In the present era of progressive technology, the concept of artificial intelligence has got widespread recognition all around the world. With the advent of new technology, the day is not far away when AI will leave no stratum of the society untouched. Today's artificial intelligence programs has the potential to create anything on its own. The fourth industrial revolution has changed the way we think, live and work. These smart technologies can now interact, visualize and create anything on its own. Today, AI enabled machines are capable of making new innovations/creations with minimal human intervention and the day is not far away when these AI programs will create a new creation/invention without any human intervention. Even in recent past, there are many incidents where artificial intelligence programs have shown their creative/innovative strength such as one computer generated short Japanese Novel qualified till second round of Japanese National Literary Prize. Similarly, a portrait called '*The Next Rembrandt*' made by a computer program after analyzing the works of a 17th century Dutch Artist Rembrandt got attention from people all around the world. Further, in 2017 Saudi Arabia has also granted citizenship to an AI humanoid Robot '*Sophia*'. This raise a serious issue that whether intellectual property protection can be granted to AI generated creations/inventions? In the present era, majority of jurisdictions do not grant IP protection to non-human authors/inventors. However, Section 9(3) of the UK Copyright, Designs and Patents Act (CDPA), in case of computer-generated work allow intellectual property protection in the favour of the programmer who makes the arrangement necessary for the creation of the copyrightable work. Here, the programmer ideally does not have any control over the creative process of the AI machines. Hence, it will not be fair to provide him intellectual property rights over the work which he has neither created nor even thought about it. Looking forward to this debate, in case of non-recognition of the work created by AI, this will make it subject to copying by other people. This research paper aims to analyse in depth that whether non-human AI generated creations/inventions can be granted intellectual property protection? The research paper will also include a theoretical framework through the lenses of John Locke's labour theory, Kant's will theory and Hegel's personality theory to suggest a new futuristic dimension to the issue of grant of intellectual property protection to artificial intelligence generated creations/invention. The author will also attempt to suggest a probable solution to the existing issue of grant of intellectual property rights to AI generated creations/inventions.

**Rujitha SHENOY, National Law University, Odisha**

*Patent Pools and Competition in US, EU & India- Problems & Perspectives*

Patent pool, as defined by USPTO means an agreement between two or more patent owners to allow or licence one or more of their patents to one another or to third parties. Patent pools became a solution when there evolved problems of patent thickets making the companies to get license from various patent holders a cumbersome task as well as heavy transaction cost involved . Thus patent pool offered a common market

for the licensor and licensee guaranteeing access to industry standards. But the behavior of patent pools by complimentary technologies without including substitution technologies resulted into technology cartels. In the case of biotechnology most of the modern medicines are based on gene patents like vaccines developed from DNA patents of viruses and patent pools are considered to resolve the patent thicket issue around genetic diagnostics. At this moment, and the most successful and global example is is the Medicine Patent Pool founded in 2010 by UNITAID. Patent pools for the biodrug development gene patents becomes quintessential because in case any outbreak of any contagious diseases like bird flu, etc. the viruses gains immunity and the lack of pediatric drugs and the need of fixed dose combinations to be administered. The technology transfer block exemption under Regulation 316/2014 is inapplicable to the pooling agreements under EU competition law regulations. This paper analyses the EU regulation of patent pools and the pro and anti-competitive effects of activities of patent pools. It examines the relationship between current EU competition law policy towards patent pools and compares with United States working of patent pools and competition who are the pioneers in coming up with the concept of patent pools. Also it examines whether the legal safeguards of the EU anti-trust framework will help to reach a healthy balance between the protection of market competition and industrial development by specially looking solutions for health care biotechnology patent pools. It also explores and EU's approach to such organization in the context of transfer of technology agreements and highlights the problems and challenges of EU competition with respect to patent pools. Patent pool may convert into anti- competitive when the members of the pool decide for not to give license to any third party and agree to fix price and quota for the same. In this context, the paper examines the provisions of Indian Patent Act as well Competition Act and the recent patent pools entered by Indian drug manufacturing company named as MedChem and Aurobindo Pharma joined Medicines Patent Pool (MPP), so that they can manufacture various anti-retroviral medicines, its positive and negative aspects.

**Putrom SIAGIAN, Faculty of Law, Universitas Sumatera Utara**

*Liability E-Commerce Platform on the Sale of Counterfeit Goods in Digital Era*

The rise in online shopping has led to a massive increase in online infringement numbers of counterfeit goods. Counterfeit goods impair economic competitiveness by harming intellectual property rights holders and diminishing the reputations and trustworthiness of e-commerce platform. In Indonesia there is no e-Commerce that has been taking similar steps with Amazon and Alibaba has taken the same step to protect intellectual property rights by establishing Alibaba Group Anti-Counterfeiting Alliance (AACAA). As a corporate, e-commerce platform not allowed to sale of counterfeit goods in Article 10 of Law No. 28 of 2014 concerning Copyrights (UUHC). There are penalty for a violation of Article 10 of the UUHC. But Article 114 of the UUHC uses the word "person" as a legal subject to violations of Article 10 of the UUHC, then the question is whether the e-commerce platform or marketplace platform as a legal entity can be responsible as the manager of a trading place that allows the sale of copyright infringement?. Through the Circular of the Minister of Communication and Information No. 5 of 2016 concerning Limits and Responsibilities of Platform Providers and Merchants through the Electronic System in the Form of User Generated Content, so that the e-commerce platform is exempt from the responsibility of selling counterfeit goods. User Generated is defined as a platform where content is created and / or uploaded independently by merchants, and not by platform providers. So, is the e-commerce platform exoneration clause free from responsibility for the sale of counterfeit goods on the platform? The research method used is normative juridical with descriptive e analytical specifications. The results of the study mentioned, e-commerce

platforms that have legal entity status as managers of trade places can be held liable if the e-commerce platform or marketplace platform is intentionally aware of and allows items which are objects of sale and purchase are the result of copyright infringement. However, in the context of providing legal certainty, in accordance with the legality principle adopted in criminal law, the UUHC penalties policy on legal subjects should be expanded to include the legal entity as the party that can be held accountable. The word let in Article 10 of the UUHC gives responsibility to the e-commerce platform to oversee not only the exoneration clause in the agreement made with the seller at the time of registration at the online trading place so that the seller does not trade in goods that violate copyrights.

**Alaknanda SINGH, ICFAI Law School, ICFAI University Jaipur**

*Counterfeiting of Brands in India: Revisiting Existing Law and Analysis of Enforcement System*

Counterfeiting is one of the forms of unfair competition. Availability of tech & easy access to internet that provides various ways of producing counterfeit items are one of the biggest reasons for sudden growth in counterfeiting. Also, the global integration of market across globe that smoothen the flow and distribution of counterfeit products from one geographic location to another has contributed in increasing the counterfeiting activities. Brands, specially the luxury ones and those dealing with essential commodities are counterfeited at large scale and this trend and practice are growing at exponential rate in India. Counterfeit markets can be seen at almost every corner of the country. This practice not only causes loss and damages to the economic interest of the original brand owners but also tarnish their reputation due to unauthorized use of the brand names on sub standard products. Brand reputation and consumer trust is something very significant and paramount in trade and business, the compromise of which destructs the very function and purpose of trademarks. Once a trust on brand is compromised, it is a grinding task and almost uncertain whether same faith can be restored among consumers. The act of counterfeiting also increases the scope of various criminal activities such as money laundering, terrorism, corruption, illegal trade and business and other prohibited activities. There are various reports and data released by United States Trade Representative (USTR), FICCI and other organization indicating the rising trend of counterfeiting activities in India. Some of the prominent places are Delhi, Kolkata, Chennai and Mumbai. Counterfeit products can be seen in almost all kinds of areas such as food products, clothing, luxury brands, drugs and medicines, electronic equipments and footwear. Consumer health and interest in this case is a major concern in India. Consumption of sub-standard products or less efficient products at high price, not only damages consumer trust but also poses threat to health and life. National IPR Policy 2016 provides for various initiatives, laws and enforcement measure that are needed to be undertaken to protect the Intellectual Properties in India, the rights of the IP holders and for the promotion of free and fair IP trade practices in India. Unfortunately, this objective could not be achieved till date as planned and as needed. Even though, counterfeiting is a criminal offense under Trademarks Act, 1999 and the act is very well recognized in India, there are various loopholes due to which the outcome is not productive. The enforcement system in India is somewhere lagging behind in implementing the legal provisions on efficient basis. The focus of this paper is on the Judicial Enforcement system in India and a comparative study of counterfeiting laws of US, UK and India. The researcher attempts to find the outcome of the judicial enforcement system by analyzing the trend of counterfeiting cases both registered and unregistered in last 5 years, judicial doctrines that are applied, frequency of successful cases and the judicial outcome so far.

**Kshitij Kumar SINGH, Faculty of Law, University of Delhi**

*Biomedical Innovation and IPR: Proprietary Claims vis-à-vis Open and Collaborative Model*

Innovation in biomedical field has remained a complex and contested phenomenon, given the varying nature of subject matters it encompasses and persistent confusion in providing a viable mode of protection to these subject matters. The nature of biomedical research is blended with basic and applied research and so the technologies it involves; platform technologies/upstream research and downstream technologies/follow up research. It is contended that proprietary claims on platform technologies may have an adverse impact on downstream research and innovation. Despite this, an increased proprietary claims over biomedical inventions through patents have been made without analysing its long-term impact on biomedical innovation. The ill effects of multiple patents on biomedical innovation was theorised by Heller and Eisenberg in their paper titled “Can Patents Deter Innovation? -The Anti- commons in Biomedical Research” in 1998, where the authors termed it as “tragedy of anti-commons”. The theory envisages the underutilization of a particular asset due to a large number of patents claimed over it. This theory however, has been given a reality check by numerous studies and the studies do not indicate a consistent pattern as to the real existence of the tragedy of anticommons in all aspects of biomedical field. Some scholars suggest that the real tragedy in biomedical innovation is not the anti-commons but the under compensation and underinvestment in developing general-purpose technologies/socially beneficial technologies. Biomedical innovation is primarily a data-based innovation where the IP protection lies between the two continuums: patents and trade secrets. In the cases of biomedical data, the adjacent rights typically involve trade secrecy or regulatory exclusivity. However, patent holders exert excessive control on the data, which a patent protected invention generates. This is due to the fact that in those jurisdictions where patent disclosure requirement is lenient or non-rigorous, inventors may keep few aspects of invention secret; yet obtain the patent regarding the whole invention. This secrecy militates against the access to such data to the public and hinders the innovation process. Biomedical innovation by its very nature is destined to promote human welfare, however, many events such as Ebola and exorbitant prices on antibiotic resistance, reflect the failure of the existing innovation model of biomedical research to address the special needs of patients. In this context, there has been a constant push for open and collaborative model. Though open innovation is being advocated for the biomedical research but what model could work in a given situation is still contested. A viable contractual framework with predefined rules is gaining momentum in cases of biomedical data. Against this backdrop, the present paper attempts to examine the viability of existing and proposed models of innovation in biomedical field based on proprietary as well as open and collaborative approaches including patent licensing, patent pooling, open science etc. It further explains the distinctive nature of biomedical field that demands a diverse treatment to promote a socially relevant inclusive innovation.

**Sujana Donandi SINURAYA, President University**

*“Benyamin Biang Kerok”, A Dispute of Copyright or Trademark?*

“Benyamin Biang Kerok” was a successful movie in 1972, played by one of Indonesian legendary comedian, Benyamin S which presented a story about Pengki (Benyamin S), a trouble maker who used to played a trick on his employer. The movie was then remaked in 2018 by Hanung Bramantyo, one of the most successful movie director in Indonesia. The writer of “Benyamin Biang Kerok” which was produced

in 1972 was filling a sue upon the production of “Benyamin Sueb” 2018 for royalty upon the reproduction of “Benyamin Biang Kerok.” The Producer denied the sue and claimed that the new version is not containing same story and they already obtained license from “Benyamin Sueb Foundation” which is considered as the owner of the copyright. Though the movie come up with the same title, the team maker of “Benyamin Biang Kerok” claimed that there are no similarity between “Benyamin Biang Kerok” 1972 and 2018 but the names of characters and the title of the movie. They insist that the story was totally different. This research try to determine a position of a movie title whether it is a copyright or trademark. Moreover, this research try to examine the legal consequences upon the using of a movie title for a new movie with different content. The methodology is normative legal research. It is a methodology which examine the legal fact using the existing norms. The results shows that a title of a movie and the characters are trademark. Because the title is a mark to represent the movie as an object of a trade. It is not a copyright for copyright is talking about the major similarity of the whole package. If the story contain major similarity then it would be a copyright issue. Using the trademark of someone else’s cause the user have to pay royalty to the owner. In “Benyamin Biang Kerok” case, the one who is constitutionally be considered as the owner of the trademark is “Benyamin Sueb Foundation”. This research could contribute to the understanding and determination upon the difference between copyright and trademark for the Intellectual Property and trademark user and as the sources of the legal enforcer to settle the related cases.

**Lily Evelina SITORUS, International Business Law, Universitas Prasetiya Mulya**

*Commercialization of Intellectual Property Rights: IP Marketplace for Indonesia*

Intellectual property rights are a valuable asset. In a company, intellectual property rights can be used as venture capital. At present, intellectual property rights also function as collateral objects. The use of intellectual property rights as collateral objects will be the theme of this study. The regulation of intellectual property rights as objects of fiduciary guarantee began to be recognized in Law No. 28 of 2014 concerning Copyright. Furthermore, Law No. 13 of 2016 concerning Patents also states that patent rights can be used as objects of fiduciary guarantee. Copyright can be used as an object of fiduciary guarantee. The provision regulated in Article 16 paragraph (3) of Law No. 28 of 2014 concerning Copyright. Further arrangements regarding these provisions are carried out in accordance with statutory provisions. In practice, implementing regulations regarding copyright that can be used as fiduciary guarantees are not yet available. The legal space in that case is actually due to the unclear provisions of the laws and regulations which would be sought in this study. Patents can be used as fiduciary objects as regulated in Article 108 of Law No. 13 Year 2016 concerning Patents. Patent arrangements as objects of fiduciary guarantees are clearer when compared to copyright arrangements. That is because the terms and procedures for patent rights as objects of fiduciary guarantee must be regulated by Government Regulation (PP). The mandate of Law No. 13 of 2016 concerning Patents to make PP regarding fiduciary is actually also not quite right. The problem that can arise from such arrangements is the lack of coordination required if fiduciary is only regulated in patent regulations. This research aims to produce policies related to intellectual property rights as fiduciary objects that can be applied to other intellectual property rights, not just patents. This research has an urgency to do because the existence of regulations regarding copyright and patents as fiduciary objects requires implementing rules according to the mandate of the legislation. Therefore, it is hoped that this research will make a significant contribution related to intellectual property rights as fiduciary objects.

**Winner SITORIUS, Faculty of Law, Hasanuddin University**

*Local Working as the Embodiment of Public Interest Protection: The Challenge of Indonesian Patent Law*

The protection of patent should take into account the balance between the interest of patent holder and the interest of public so that justice may be achieved. This study aims to analyze the legality of local working as the embodiment of public interest under Indonesian Patent Law and TRIPs Agreement. Part I elaborates the arrangement of public interest in Indonesian Patent Law and TRIPs Agreement. Part II describes the debate over the arrangement of local working under Indonesian Patent Law. Part III discusses the legality of the local working requirements under TRIPs Agreement. Part IV concludes that local working requirements are permitted in TRIPs. Domestic legislation stipulating local working requirements does not contravene TRIPs provision, especially Article 27.

**Enni SOERJATI, Faculty of Law, Universitas Padjadjaran**

*The Comparison of Patent on Internet of Things and Artificial Intelligence Regulation between Indonesia and Other Asian Countries*

One of the Intellectual Property Rights is patent, a legal grant given by the government to the inventor which excludes others from making, utilizing or trading the invention for a set period. These property rights allow the holder to exercise a monopoly on the use of the item for a specified period. It gives a person certain exclusive rights to a distinct type of the invention, meaning that nobody else can copy or reuse that invention without the owner's permission. The holder can get the economic rights from that exclusive rights, that means they can earn money from using the rights, and they protected by the law. In the development of technology, there are concepts of the relation between human and technology, such as Internet of Things (IoT) and Artificial Intelligence (AI). The concept of IoT is simply pointed to the network of interconnected things or devices which are embedded with sensors, software, network connectivity and necessary electronics that enables them to collect and exchange data making them responsive. IoT is essentially a platform where embedded devices are connected to the internet, so they can collect and exchange data with each other. It enables devices to interact, collaborate and, learn from each other's experiences just like humans do. IoT can help human task in daily life with its ability to connecting human to machine or vice versa, such as to control the house security or to manage the agriculture system. For simple example of IoT is how to make on and off the lighting at house. The concept of AI is pointed to an area of computer science that emphasizes the creation of intelligent machines that work and react like humans. Some of the activities computers with artificial intelligence are designed for include: Speech recognition. AI emphasizes on creation of intelligent machines that work and react as humans. For example; computers with artificial intelligence are designed for activities such as Speech recognition, Learning, Planning and Problem solving. Because of in Indonesia these technologies have begun to be used, this research will discuss about what kind of protection can be given to the inventors of IoT and AI. How the government guarantees legal protection for the inventors of IoT and AI, and how it is implemented in practice. Whether the protection has been regulated in the Indonesian regulations?, and how is the implementation in practice? The important thing from this research is how does it compare with the regulation in other Asian countries?

**Sadhana SRIVASTAVA, Indian Council of Medical Research**

*Intellectual Property Policy Framework for Promoting Access (Availability, Affordability and Acceptability) to Health Care in Developing Countries with Focus on India*

One of the major challenges of Governments the world over, is providing access (availability, affordability and acceptability) of health care due to the ever increasing cost of health products viz., drugs, diagnostics, vaccines and other biologicals. Most developing countries including India depend heavily on generics, copies of innovator products. Significantly, India is among the few countries that have managed to encourage and sustain the production of high quality generics both for its own use as also export to US, Europe etc. This could be due to the Indian Patent Act (1970) that did not allow product patenting. This has changed since 1996, when India became TRIPS-complaint significantly impacting the cost of health care especially for chronic diseases like cancers, diabetes *etc.* While steps as issue of compulsory licensing are useful tools, they are largely unsustainable. India therefore has unleashed several new policy initiatives in the area of IP for promoting affordable health care within the ambit of WTO patent regime. A new ecosystem for innovation has been launched along with other policy initiatives to promoting indigenous innovations to face the IP challenges of a fully complaint-TRIPs regime. The major agency in the health care sector is the Indian Council of Medical Research (ICMR), Department of Health Research (DHR) that has nation-wide institutional network to support, promote and encourage creating affordable technological solutions for the Indian people. A major policy framework and support system was put in place through the Intellectual property Rights (IPR) Unit, Division of Innovations & Translation Research. The first national IP policy for promoting medical inventions was brought out in 2002 (revised 2013) outlining the policy framework for inventors to file and exploit new IP. Guidelines were also framed in 2015 for filing patents abroad. India's National IP policy was released in 2016. The Make in India is another initiative of Govt of India to promote entrepreneurship by Indian inventors. A new IP policy for academic institutions is being finalized besides initiatives like *Innovate India* and *Skill India*. All these policy initiatives are expected to support the 18 Govt health schemes and the *Ayushman Bharat*, a nation-wide flagship health care programme launched by the Prime Minister to promote access to affordable healthcare. This rebooting of the entire innovation ecosystem in India appears to have fostered more creativity and innovations. The number of patent filings trebled between 2013-14 and 2017-18 and the rank of India in the Global Innovation Index rose from 81 in 2015 to 52 in 2019. The impact of these new policy initiatives in the endeavor of achieving the overall objective of providing access to health care in India will be discussed.

**Paul Thomas SUGDEN, Monash Business School, Monash University**

*Chinese Interpretations of Copyright Infringement in Music Compared with Australia and USA – Two Tones or Tales?*

The increased examination of copyright and its advantages to the economy has seen policy changes that favour the development of a local music industry. The development of a local industry not only requires enforcement of rights to control Copyright infringement through criminal copyright infringement actions about western music, but also the protection of local music developing from interaction and adoption of western musical structures and idioms. This paper examines the interpretive tests for assessing infringement used in Chinese civil actions as compared to the tests utilised in Australian/USA.

**Agung SUJATMIKO, Faculty of Law, Airlangga University**

*Legal Protection of Trademark in Kediri Small and Medium Entrepreneur*

The legal protection for trademark in Indonesia is regulated in Law Number 20 Year 2016. According to the legal system which has adopted, this Act requires that legal protection of trademark available to be obtained through the registration, on the other words that there is an obligation for the owners to register their own trademarks. In fact, several small and medium entrepreneurs (SMEs) in Kediri still do not have awareness to register their own trademark yet, due to lack of the literation about the legal system of trademark, the procedure and its application. Unfortunately, it is common for the SMEs in Kediri used to use the other parties' trademark without any permission. The application of the trademark without permission is a violation in the perspective of intellectual property law. This situation will be facing the dispute among the parties, especially the claim from the genuine trademark owner who have registered their trademark first. The dispute will spend the time, energy and alot of money.

**Mafruz SULTANA, Faculty of Legal Studies, South Asian University**

*Legal Regime of Plant Varieties in International Law and Bangladesh*

Food is the basic need of human beings where only agricultural development can meet the challenging need of growing community. In this respect plant varieties is a scientific way to grow more and to mitigate food scarcity. Plant varieties are generated from plant genetic resources; it is the development of a plant by changes sub genesis of the plant for the development of food and agriculture. Plant varieties are integrated with the rights of farmers, rights of breeders and rights of local community. Breeders can have rights to breeding, while the farmers can have rights, as a farmer having traditional farmer's rights, farmers as breeders and farmers as the local community. TRIPS agreement Article 27 .3(b) obliges State parties to protect plant varieties either by patents or by effective sui generis system or by any combination thereof. However, UPOV convention has come into picture even much more before for the protection of plant varieties as an independent regime. According to TRIPS agreement member States either has to protect plant varieties as patent protection or sui generis system. To protect breeder's right under sui generis system, States can protect breeders right according to UPOV convention if State is a party of it, or by enacting domestic legislation as State deems fit and proper. When we talk about plant varieties apart from breeder's rights, we need to protect farmer's rights which come under ITPGR convention. However, UPOV and ITPGR conventions do not provide any protection or rights of the local community of plant genetic resource. Which may cover under CBD convention? While ITPGR talks about benefit sharing to the global community, CBD recognizes the rights of local community for access and benefit-sharing upon mutual agreement. Bangladesh is a member of WTO, ITPGR and CBD hence obligation lies to implement these conventions. However, as a least developed country, until 2021 under TRIPS transition period Bangladesh is not obliged to comply TRIPS obligation. In the absence of new legislation the patent and design act 1911 is dealing issue related to patent protection. There is no legislation to deal with plant breeders or rights of the farmers. Meanwhile, Bangladesh drafted Plant Varieties Act several times which is not passed yet. There is tension even if the draft be adopted how far it will balance rights of Farmers and plant breeders. The drafted Act does not include Farmers as breeders, even if they breed any plants. In the absence of any regulations regarding plant varieties, Bangladesh has enacted Biodiversity Act in 2017 which requires access and benefit-sharing of IPR rights. So it must implement access and benefit-sharing mechanism in

that respect Bangladesh Biodiversity Act 2017 has passed to balance IPR and CBD regime. Following doctrinal methods of research, this article will describe rights regarding plant varieties under TRIPS, UPOV, ITPGR and CBD. After analyzing this international regime, this article will draw picture from existing regulation of Bangladesh related to plant varieties and what need to have for the esurience of rights of breeder's farmers and local community when plant is a genetic resource.

**Shirin SYED, Kavayitri Bahinabai Chaudhari North Maharashtra University**

*Patent and Generic Availability: a Case Study of HIV, HCV and TB Medicines in India*

In 2005 India introduced product patent protection to pharmaceutical patent protection to comply with the TRIPS Agreement. As a result of the product, patent protection molecules invented on or after the 1st of January 1995 became eligible for the product patent protection. The introduction of products curtailed the freedom to produce generic versions of the new molecules which often have product patent protection. However, the generic availability of new medicines for communicable diseases such as HIV (Human immunodeficiency virus), HCV (hepatitis C virus) and TB(Tuberculosis) has not been hampered. While the first- and second-line medicines for all the three diseases were invented before 1995. However, the medicines for the second line, third-line treatment or the new long-acting treatments are eligible for patent protection and therefore the generic availability of these medicines is a matter of concern. This paper looks at the generic availability of select medicines for the treatment of HIV, HCV, and TB, which are part of the WHO's list of essential medicines/treatment protocols. Through the Patents Act provides various safeguards to ensure generic availability during the pre and post-grant stages of the patent. These include the strict patentability criteria, pre-grant opposition, post-grant opposition, parallel importation, compulsory license, and government use. However, the main instrument which facilitated the generic availability is the Voluntary License (VL). Indian generic companies have obtained VL from either a patent holder or Medicines Patent Pool (MPP). There are VLs on 11 molecules. The break-up of VLs available is as follows: HIV (7), HCV (3) and TB ( 1). Thus, VLs are playing an important role in the generic availability of medicines in HIV, HCV, and TB. But the examination of the patent status of these medicines shows that only a few patents are granted but as many patent applications are pending. The Annex of VLs too shows that most of the patent applications are still pending. In other words, it means in many cases VLs are granted on patent applications. Thus it is important to examine the role of VL in the generic availability of these medicines. This paper focuses on the question of whether VL is an innovative way of ensuring generic availability or an instrument or a private ordering. Towards this purpose, the first part of the paper provides a survey of the generic availability of select medicines for the treatment of HIV. HCV and TB in the WHO EML or WHO Treatment Guidelines. Second, part looks at the patent status of these medicines in India including the patentability of claims under the Indian Patents Act. The third part will examine the landscape of VLs. The fourth Part will analyse the provisions of VL available in the public domain. The fifth part examines the factors contributing to the large number of VLs. The sixth part will contain the major conclusions of the study.

**Dilan THAMPAPILLAI, College of Law, National Australia University**

*Artificial Intelligence and the Unravelling of Copyright Law*

Copyright law is one of the more omnipresent laws of the internet era. Yet, everything within copyright law is predicated around human beings. As a property system, copyright law represents a series of inter-related rules and compromises. Artificial intelligence represents a profound challenge to the viability of this system. It is abundantly clear that AI technologies are creating works within which copyright would exist if they had been authored by a human being. The commercial utility of these works is yet to be tested, though on their current trajectory it is more than likely that these works will have some commercial value. This is significant with copyright law, a body of law where rights emerged from the existence of value. There are already a handful of jurisdictions that just might extend protection to works of non-human authorship. However, at present, much of the debate around copyright and AI centres upon whether the gatekeeper doctrines of originality and authorship can be modified so as to permit the extension of protection to works of non-human authorship. This would merely give AI technologies entry within the copyright system. The more troubling problems occur post-entry. Once AI technologies get established within the copyright system and become productive, then there is a very real possibility that they will unravel the existing bargains between copyright owners and users. Copyright is essentially a binary system that is mediated by the state. There are the property owners, in the form of copyright owners, and the non-owners, in the form of the reading public. However, AI technologies effectively provide a third player within the system. AI is more than an intelligent tool. Even if a human owner can be found, to whom property can be allocated in works of non-human authorship, there will still be problems. Examples of these potential problems can be seen in the fields of fair dealing and infringement. Fair dealing is a defence to a claim of infringement. Its purpose is to provide a safety valve within the copyright system. However, AI technologies are likely to exhibit three problematic characteristics. These are: (i) likely to be vigilant property owners and this is problematic because copyright works as a property system to some extent due to a high degree of non-enforcement of trivial matters; (ii) likely to be hyper-productive and this would soon make a mockery of the fair dealing and infringement laws because human creators would soon be crowded out; (iii) likely also to be adept at infringement and this would be a major problem where an autonomous AI technology infringes existing copyrights but liability cannot be sheeted home to a human person. Ultimately, AI threatens copyright law with a state of doctrinal exhaustion. The reasons for copyright law's rules may soon cease to exist if AI gets substantially enmeshed within the copyright sphere. Yet, total exclusion from copyright law is not a viable solution.

**Kuhu TIWARI, Rajiv Gandhi School of Intellectual Property Indian Institute of Technology Kharagpur (co-author Niharika Sahoo BHATTACHARYA)**

*Legal Challenges in Protecting Non-Conventional Pharmaceutical Trademarks in Different Jurisdictions*

The pharmaceutical branding has reached the next level, where non-conventional trademarks such as color, shape, smell, taste and design of the medicines and its packaging play a critical role making it more appealing and recognizable. However, the non-conventional trademark forms a grey area in the trademark law where besides distinctiveness; the functionality of the mark becomes the basis for objections to the registration. For examining the registrability of such marks in different jurisdictions

follow different thresholds. For instance, in the United States (US) all the non-conventional marks are judged through the test of functionality. For example in the case of *In Norwich Pharmacal v. Sterling Drug Inc.* (1959), the federal court denied the protection to a pink colored liquid preparation called Pepto-bismal for the treatment of stomach disorders, reasoning that the color pink was functional, as it gave a pleasing appearance. In contrast, the test of functionality applies only to the shape of goods and not to other non-conventional trademarks in the European Union (EU). Nevertheless, both the US and EU permit registration for the non-conventional features of the medicines in form of shape and single color trademarks. For example, Pfizer has registered the blue color and diamond shape of the Viagra tablet and AstraZeneca owns the purple and gold color marks for Nexium (the purple pill) both in the EU and the US. However, the trademark legislations of the global generic hubs like China and India do not even expressly acknowledge certain non-conventional marks like the single color mark. In China the non-conventional trademarks are gradually getting recognized. Recently in 2018, the High Court of Beijing upheld the single color mark of Christian Louboutin for its red-soled footwear. However, the Chinese Trade Mark manual on Examination and Review Standard, explicitly listed specific single colors as not registrable, because they are considered devoid of distinctive character, leaving the question of registrability for other colors ambiguous. Whilst, the Indian judiciary in the case of *Cipla Ltd v. MK Pharmaceuticals* (2007) restrained Cipla from claiming exclusive right on the oval shape, orange-colored 'Norfloxacin' tablets reasoned that the medicines are not bought by colors. Hence, there seems to be a dichotomy between the practices followed in different jurisdictions for non-conventional marks in the pharmaceutical sector. In this context, the paper aims to provide a comparative picture of the legal standards followed for the protection of non-conventional trademarks, emphasizing color marks for pharmaceuticals across developed and developing regions like US, EU, India and China.

**Jun TOMITA, Graduate School of Law, Waseda University**

*Introducing Indirect Patent Infringement in China: The Japanese Experience*

The US, Japanese, and European patent systems provide for protection against both direct and indirect infringement. China, the country that is receiving the highest number of patent applications in the world, is the only member of the IP5 forum that has not introduced any provision on indirect patent infringement in its patent act. That said, China has been in process of discussing and preparing the fourth amendment of its patent act for a number of years. One of hottest topics in the discussion is whether or not a provision on indirect infringement should be introduced into the Chinese Patent Act. The initial amendment draft did not include such a provision on indirect infringement. In late 2015, however, an article regulating indirect infringement was added the amendment draft; such article was removed against in 2018, and no final decision whether or indirect infringement will be codified in the revised patent law has been made to date. This paper will argue that China should codify indirect patent infringement in light of the Chinese social background and the country's intellectual property strategy. In doing so, it will also draw a comparison to the development in Japan and review the discussion that Japan had when it started regulate indirect infringement.

**Tatsuhiko UENO, Law School, Waseda University**

*Copyright Exception for Text-and-Data Mining: Japan as "Paradise for Machine Learning"*

The Japanese copyright exception for TDM (text-and-data mining), which was already introduced in 2009 and furthermore extended in 2018 as one of the "flexible" provisions on copyright exception and limitation, is the probably broadest provision in the world and therefore quite helpful for machine learning and AI business in Japan. The purpose of this presentation is to examine the significance of and the rationale for the TDM copyright exception by introducing the discussion over the "flexible" copyright exception for an exploitation "not for enjoying" (Art. 30-4) in Japan and to try to consider the possible implication for the Asian countries.

**Harshani Gayana VIDANAGAMACHCHI, Department of Mass Communication, University of Kelaniya**

*Effect of Regulation for the Protection of Intellectual Property in Sri Lanka*

Intellectual Property refers to creation of the mind which enable people to earn recognition or financial benefits from what they invent or create. It is an intangible asset of a person. Creations are given the exclusive rights to protect their creations through the Intellectual Property Rights (IPR). Mainly we can recognize the four types of Intellectual Property include Trade Secrets, Trade Marks, Copyrights and Patents. Intellectual Properties are not tangible because it originates in the human mind involving human intellect and are valuable assets in an any country in the world. Therefore, every country has given a prominent place in legal system to this Intellectual Property Law for the protection of these valuable assets. Legal systems are not equal or not similar in every country in the world. There are many regulations are available at present in order to protect the Intellectual Property in our country. In Sri Lanka Intellectual Property is protected by the provisions of the Intellectual property act No:36 of 2003 which replace the code of Intellectual Property Act No:52 of 1979. Intellectual property act No.36 of 2003 is the framework with which the Intellectual property Rights are currently protected in the Island of Sri Lanka. Which is a member of the state of the World Intellectual Property Organizations and a party of the several International Agreements such as Patent Cooperation Treaty, Berne Convention, The Agreement on Trade Related Aspects of Intellectual Property Rights TRIPS. The Berne Convention is an International agreement of governing the copyright. Which is for the Protection of Literary and Artistic works. According to the Act No:36 of 2003, Intellectual Property classified under several headings. Copy right and related right, Industrial Designs, Patents, Marks and Trade Marks, Collective Marks, Certification Marks, Trade names and Layout Designs of integrated circuits to be given the protection of Law. But there are recorded many cases against the violations of Intellectual Properties. Therefore, It is timely needed to pay our attention on this regard to protect those Property. Recently, there has been an awareness of the importance of intellectual property regulations in Sri Lanka. The protection of creative efforts which encourage further creations, Technological transfer and economic growth in country. All over the world Intellectual Property rights are being infringed day by day. The main objective of this paper is to investigate the effect of legal procedure for the protection of Intellectual Property in Sri Lanka. In order to achieve the aforesaid objective. It is plan to study the current laws and Regulations regarding and analyse three identified cases relevance to the violation of regulation on Intellectual Property. The expected findings of this research will explain how it has been violated the regulations what are the action has been taken against those situations and will recommend the activities can be taken in future to protect the intellectual property in Sri Lanka.

**M. Afzal WANI, School of Law and Legal Studies, Guru Gobind Singh Indraprastha University**

*Unauthorized Publishing and Dubious Photo-copying of Books in the Name of Academics in Developing Countries: Looking for Solutions for Authors' Concerns [The Trend in India]*

Intellectual property rights have a prime role in taking the world ahead for more humane, just and assertive global community. Due to consistent efforts of the World Intellectual Property Organization and other related institutions/groups at international and national levels Intellectual Property is becoming a more and more familiar phenomenon worldwide among common masses as well. Court system has also got acquainted with issues of Intellectual Property claims. It has largely become a popular course for law students in most of the universities. However, we have yet to travel too much on inculcating the Intellectual Property Rights as values basic for the sustenance of honest human endeavor together with appreciation of others creative efforts and turning one's own self in to a creator and innovator. This is not so yet in developing countries. Fair quality production, fair consumerism and fair recompense to creator have to go together. Though economic poverty is a reality, it should not be a continuous justification for violation of Intellectual Property Rights and take away others due unduly. Impoverishment has its own methods for controlling and respect for Intellectual Property Rights can become a major vehicle for alleviation of poverty. Poverty of character and poverty in skills can never be justified as a solution to any wrong being committed with laxity and inertly. One such situation is, as in India, unabated printing and photocopying of books is being done without consent/free consent of authors in the name of making materials available to academic community for academic purposes. This is being justified at judicial level also. In India the new Intellectual Property Rights Regime is now in place for more than two decades. This is somehow true for other developing nations also. This trend is resulting in loss to economy in millions of dollars in various countries and more to developed countries creating major part of the knowledge available in the developing world. So the issue needs due attention to develop a harmonic workable system for further promotion of understanding of the common people in Intellectual Property Rights and culture as a legitimate measure of knowledge and wealth creation to be respected by all. Schemes for having better education system and skill development are required to mitigate the situation but in teaching and training also the respect for Intellectual Property Rights should be supreme.

**Padmaja Charumathee WIJESOORIYA, Faculty of Law, General Sir John Kotelawala Defence University**

*A Crisis in Waiting: Access to Medicine under Intellectual Property Law*

Access to essential medicine is a vital component of the universally held right to health, recognized by the Universal Declaration of Human Rights (UDHR). Medicines/pharmaceuticals are protected by the patent regime in intellectual property law which guarantees the protection of creativity and innovative skills of the patentee. The Agreement on Trade-Related Aspects of Intellectual Property Rights (Agreement), however, limits the access to medicine by stipulating that measures necessary to protect public health and nutrition should be consistent with the Agreement. This barrier creates obstacles such as a lack of equity in the supply of essential medicines, leading to high priced medicines that affect the poor and vulnerable. It also leads to informal payments and out-of-pocket payments which particularly affects the developing and less developed countries. To overcome this barrier, the Agreement imposed a discretionary power upon the government by introducing the compulsory licensing whereby public health issues can be

legitimately considered as a national emergency. In addition, the provisions on compulsory licensing in the Agreement, the Declaration on the TRIPS Agreement and Public Health (Doha Declaration), recognized the public health crises such as HIV AIDS, tuberculosis, malaria, and other epidemics could represent a national emergency. Two case studies from developing Asian countries illustrate how Asian countries have attempted to deal with this issue. India has focused on an important issue of access to medicine in the developing world by providing compulsory licensing to sustain local recognition of the patent. In addition, Thailand has increased the regular use of compulsory licensing to overthrow the barriers to access to medicine. This article attempts to evaluate the problems faced by the developing countries in Asia regarding access to medicine and recommend a future course of action in both national and international lawmaking on this issue.

**Chih-Chieh YANG, Institute of Technology Law, Yunlin University of Science & Technology**

*How to Protect the Traditional Intellectual Creations of Indigenous Peoples? Registration System and Fair Use*

What kind of protection strategies should we adopt with respect to the traditional culture expression of indigenous peoples? There have been a number of different models for the protection of traditional cultural expressions. The first interest of this study is what exact models do several Asian countries have adopted for protecting of culture expression of their indigenous peoples? In particular, some Asian countries have begun with the registration system for this kind of protection of culture expression. Among these countries, one had tried hard and spends almost ten years to make registration system worked. They had promulgated implementing rules, trained the indigenous peoples and tribes applying for protections, and finally there are now 57 successful registered traditional intellectual creations belonging to different tribes. After ten years training and helping, the success of these registrations, to their government's surprise, in 2018, the very first one infringing case of these registered traditional intellectual creations is against the usage of government themselves. After this infringement allegation, this government notices that their Act is full of demerits, need to be reviewed and amended. Among the issues need to be reviewed, the most important issues is what the appropriate scope of fair use of these registered traditional intellectual creations? In the paper, I will introduce this development of the registration system for protection of culture expression owned by indigenous peoples, the infringement dispute in these countries, and review of the scope of fair use in their Acts. In particular, I will compare it with the WIPO *The Protection of Traditional Cultural Expressions: Draft Articles Facilitators' Rev. 2* (August 31, 2018).

**Dai YOKOMIZO, Faculty of Law, Nagoya University**

*Cross-border Trade Secret Disputes – Analysis by Conflict of Laws*

The purpose of this presentation is to analyze cross-border trade secret disputes from the viewpoint of Japanese conflict of laws (private international law). Cross-border disputes with regard to trade secrets has increased in number and become highly significant. The conflict-of-laws analysis is needed in order to deal with these disputes, such as which court(s) should try a case (international adjudicative jurisdiction) and which state law should govern a legal issue (applicable law). However, in recent disputes, the situation is more and more complicated, in particular due to the misappropriation of the information over the internet. It is sometimes the case where the place of the misappropriation of the information, the place of the exploitation or the disclosure of the information, and the place where damage was suffered are different.

Such the situation makes the conflict-of-laws analysis difficult. For example, under the Japanese choice-of-law rules, claims arising from a tort shall be governed by the law of the place where the results of the infringing act are produced. However, where is the place of the result in the above-mentioned case? Moreover, states have been taking a stronger policy to prevent the misappropriation of trade secrets in a cross-border way. For example, Japan broadened the extraterritorial scope of the application of the penal law rules with regard to the misappropriation of the information. Does such a state interventionist tendency have impact on the conflict-of-laws analysis? Should some provision relating to the misappropriation of trade secrets be considered as overriding mandatory rules? This presentation will analyze these conflict-of-laws issues arising out of the recent development of cross-border trade secret disputes, focusing on Japanese law.

**Helen YU, Center for Advanced Studies in Biomedical Innovation Law, University of Copenhagen**

*Leveraging Research Failures to Accelerate Drug Discovery and Development*

Research failures have been identified as one of the most significant costs associated with the average \$2.6 billion dollar price tag and 12 years timeframe to bring a drug from discovery to market. The European Commission estimates that 20 billion dollars are spent every year to develop innovations and technologies that have already been developed elsewhere, highlighting the exorbitant cost of duplication. The competitive nature of most industries highly dependent on research excellence, innovation, and speed to market is such that the voluntary sharing of information may not be particularly attractive or forthcoming despite the highly publicized research on the advantages of open science, open access, and open innovation. However, sharing research failures may be perceived as less competitively threatening as it is considered ‘useless’ data to the party owning it, but highly valuable to the competition. In the context of how biomedical innovation is being carried out today, not all intellectual efforts that contribute to the creation innovations can be protected by traditional forms of intellectual property (IP). If proprietary information necessary to create innovations cannot be adequately protected as IP rights, innovators and researchers are likely to safeguard their personal interests at the expense of sharing data despite the potential advantages of adopting an open approach. A combination of existing legal tools and technology such as trade secret protection, blockchain, and knowledge commons, may provide the necessary legal basis for a platform ecosystem that can incentivize and capture the value of sharing intellectual contributions (such as research failures), while protecting innovators against free-riding and unauthorized appropriation by third-parties. A framework that proactively allows for the recognition of contributions by way of research failures to an innovation could translate into a revenue-sharing model that in turn may lead to more openness and overall acceleration of product development.

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*The Protection of Traditional Knowledge under Indonesian Patent Law: Between Opportunities and Challenges*

The protection of traditional knowledge through patents is still an interesting issue on an international level. Indonesia has revised Patent Law in 2016 (Law Number 13 of 2016 concerning Patent or Indonesian Patent Law). This Law has confirmed that, patent is exclusive rights which giving by country for inventor

to invention in the field of technology, for a certain amount of time, to implement itself or giving for other party to implement that. And, the patent can be submit if required terms of patents application, there are novelty, inventive steps, and industrial applicable. That provision cannot be fulfilled by traditional knowledge, where traditional knowledge is knowledge which is passed down from generation to generation. This study is a doctrinal study that will analyze Article 26 of the Indonesian Patent Law. The study found that, Indonesia has required the mention of sources of origin in traditional knowledge under Indonesian Patent Law. This article provides opportunities for the protection of traditional knowledge. And, it is at the same time a challenge for communities to obtain protection and benefit sharing from traditional knowledge that the original source has stated at the time of filing a patent.