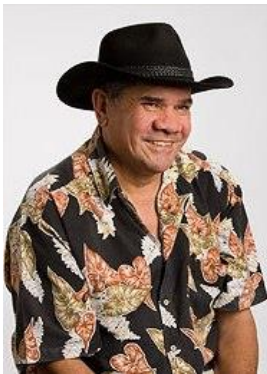


Prof. Mick Dodson (Australian National University)

**„Dream Shields, Carpets and Crocodiles“. Protecting Indigenous Knowledge and Intellectual Property – The Australian Experience. The Story So Far.**

Tuesday 18 January 2011

Being a 400-year old reflection of Lucerne's cultural heritage, the Kornschütte of the Lucerne Rathaus was the ideal location to hear from a representative of a very old culture. The scene was perfectly set for Australian National University's Prof. Mick Dodson to speak about the experiences that Australian Aborigines and Torres Strait Islanders (the two distinct Indigenous peoples of Australia) have had in protecting their traditional cultural expressions and traditional knowledge. He did so under the umbrella of the Laboratorium Lucernaiurus Lecture series, headed by Prof. Michele Luminati, and as a guest of the i-call "International Trade in Indigenous Cultural Heritage" Workshop, under the leadership of Prof. Christoph Graber.



Mick Dodson is a member of the Yawuru peoples, from the Broome area of southern Kimberley. He directs two institutes for Indigenous Studies in Australia and has been elected to chair Australian Studies at Harvard University in 2011. Prof. Dodson was Australia's first Aboriginal and Torres Strait Islander Social Justice Commissioner and was named Australian of the Year 2009 in recognition of his lifetime commitment to improving the lives of Aboriginal people and promoting understanding between all Australians. He is also a prominent advocate for the rights of the Indigenous peoples of the world, acted as a member of the United Nations Permanent Forum on Indigenous Issues and participated in the drafting of the Declaration on the Rights of Indigenous Peoples, adopted in 2007 by the UN General Assembly.

Prof. Dodson started his presentation by explaining the term "Dreamtime". In Aboriginal tradition, the "Dreamtime" incorporates concepts of their belief system, creation, social structure and way of life. It is something difficult for non-Aboriginals to fully understand, but includes in it their traditional cultural heritage. Thus, in 2010, Intellectual Property Australia (a Government organisation) launched "Dream Shield", which is a "guide to protecting designs, brands and inventions for Aboriginals and Torres Strait Islanders". The Dream Shield project features real intellectual property (IP) success stories to show Indigenous peoples how to best develop, protect and maintain their IP.

One of the success stories told by Mick Dodson (and the Dream Shield Project) was that of Aboriginal Elder John Watson, a friend of Dodson's, who lost his finger while hunting crocodiles in the traditional manner of using only his bare hands. In order to stop the bleeding and numb the pain, he used the bark from the Marjala plant, a traditional medicine from Watson's community. The community initiated a research partnership with Griffith University, which eventually resulted in the grant of a patent and the possibility of commercial application.

Mick Dodson also mentioned what are considered to be two of the best examples around the world of courts enforcing Indigenous people's rights to their traditional cultural expressions. In 1994 and 1998, there were two cases relating to the non-Indigenous manufacturer of carpets using Aboriginal designs on them. In the first case,

the works were exact reproductions of artworks still under Western copyright or simplifications thereof, produced overseas and imported into Australia. The carpets even had labels on them stating “Proudly Designed in Australia By Australian Aborigines”. This case could simply have been solved by Western copyright and consumer protection law, however, the presiding judge took a rather radical approach and additionally awarded damages for “cultural harm” and allowed the community to determine for themselves the distribution of such. The second case, another carpet manufacturer reproduced an Aboriginal artist’s painting on carpets. The artist along with the community to which he belonged argued that this was a breach of the title of the community, who collectively had guardianship over the images and concepts in the painting. The judge was sympathetic to their arguments, but the Western concepts of property prevented him from so holding. However, he found that members of a community have fiduciary obligations to their community to prevent copyright infringement by third parties, which was satisfied.

Of course, though the outcomes of these cases were positive, there are many situations where Indigenous traditional knowledge and cultural expressions fall outside the confines of classical IP norms. As the second carpet case showed, the court could not recognise communal ownership, as classical IP is very individual in nature. There are also problems that there are time limits set on copyright and patent terms, when Indigenous peoples consider their guardianship as never ending. Requirements of originality and novelty are also problematic to communities that have been practicing their cultures for thousands of years. These insufficiencies lead Prof. Dodson to conclude that Australia needs to introduce a *sui generis* system to protect the cultural heritage of its Indigenous peoples.

The lecture gave members of the university, public and workshop participants (including representatives of the Swiss administration) an important Indigenous perspective. Hearing the viewpoints of Indigenous peoples is vital for transdisciplinary research that seeks to cross the boundaries between different world views. It was a culminating point of the Workshop to give Mick Dodson an opportunity to share his voice in a Laboratorium Lucernaiurus Lecture.

{Jessica C. Lai}