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Business Law
Building, Resources and Market
Ministry of Business, Innovation & Employment
Wellington

By email: IP.Policy@mbie.govt.nz

Re: Disclosure of origin of genetic resources and traditional knowledge in the patents regime

The New Zealand Law Society welcomes the opportunity to comment on the *Discussion Paper: Disclosure of origin of genetic resources and traditional knowledge in the patents regime, September 2018* (discussion paper)**.**

The Law Society's Intellectual Property Law Committee has considered the discussion paper. Questions 1 – 5 concern policy issues[1] that are outside the Law Society's remit and about which it expresses no view. Responses to the remaining questions, dealing with the design features of the law, are set out below.

Key design features

Q6: What are your views on the design features of a potential disclosure of origin requirement?

Any definition of biological or genetic resources should be limited to what is practical to determine and enforce. Microorganisms are ubiquitous and not bound by national borders and raise particular issues.[2]

Any definition of a trigger mechanism should take into consideration the degrees of separation between a derivative and what it is derived from. For example, a chemical compound isolated from a plant known from traditional knowledge to treat a specific indication would be derived from that knowledge. But suppose that further research found that the compound was useful in the treatment of a different indication not suggested in the traditional knowledge. Should the second example fall outside of the trigger mechanism?

Any definition of what constitutes adequate disclosure should make it clear whether reference to published descriptions of traditional knowledge is sufficient. For example, the books *Māori Healing Remedies: Rongoa Māori* and *Māori Healing and Herbal* by Murdoch Riley contain many examples of

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1 Relating to the problem definition, reform objectives and options analysis.

2 For example, suppose a New Zealand schoolgirl came home from a school trip to Mexico and was diagnosed with swine flu. A local medical researcher obtained informed consent from the girl and her parents to take a blood sample from which the researcher was able to make a vaccine. The swine flu originated in pigs in Mexico but mutated to infect a farmer from whom it was passed to a taco vendor from whom the schoolgirl caught it. Is the flu virus a genetic resource of Mexico or New Zealand? If it is a genetic resource, would an access and benefit agreement with respect to the exploitation of the flu vaccine have to be made with the schoolgirl, the taco vendor, the farmer, or all of them?

traditional healing remedies and their plant sources. For options 1 and 2, disclosure of a publication would seem to be sufficient, but for option 3 it would not seem to be.

Q7: Are there other design considerations we should consider?

If there is to be a bioprospecting regime intended to implement the Wai 262 report recommendations,[3] its enforcement and penalty provisions might overlap with any enforcement and penalty provisions under the patents regime. This possibility should be considered and avoided before amending the patents regime. (Paragraph 106 of the discussion paper suggests that any reconciliation would occur later.)

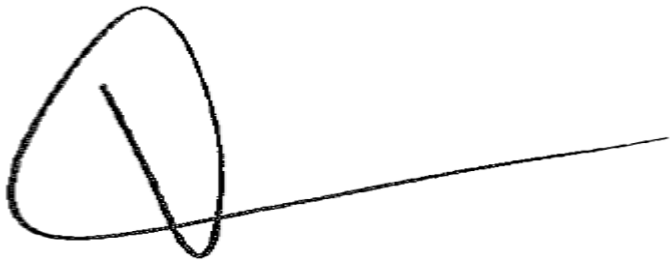
Additional comments about the discussion paper

The Law Society notes that the Wai 262 report identified a continuum starting with bioprospecting and ending with commercialisation that might impact upon kaitiaki relationships with taonga species. Because of this the report recommended that engagement with Māori should be undertaken at the earliest opportunity. The patents regime is near the downstream end of the continuum.

Conclusion

We hope you find these brief comments helpful. If you have any questions or wish to discuss the comments, the convenor of the Law Society's Intellectual Property Law Committee, Greg Arthur, can be contacted via the Law Society's Law Reform Adviser, Emily Sutton (Emily.Sutton@lawsociety.org.nz / 04 463 2978).

Yours faithfully



Andrew Logan
Vice President

[3] *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity: Te Taumata Tuatahi* (Wai 262, 2011), Waitangi Tribunal.