

## *IP Law Policy and Practice Seminar 2007 - Case study:*

# **The APEC Adventure**

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9 August 2007

The Case Study is an unfolding sequence of events relating to your work on APEC Australia 2007. It consists of six numbered 'scenarios', each being a snapshot of the facts at a point in time. You are to identify and discuss the IP issues arising from each scenario.

The Case Study continues some of the plot lines and characters from previous AGS Case Studies (referenced in the bibliography). However you do *not* need to read the earlier Case Studies.

### **Read carefully**

Please read the scenarios carefully, reading between the lines as appropriate. Sometimes the issues are obvious; sometimes less obvious.

### **Focus on IP**

Please confine yourself mainly to IP issues. You may see issues in other areas, e.g. privacy, procurement, probity, etc. You may note these issues, but the main focus should be on IP.

### **Analysis tips**

If you think some critical item of information necessary to your decisions is not provided, state what that is and why it matters. Often the right answer is: 'it depends'. Express any assumption(s) on which your answers are based. And remember that identifying questions is more important than knowing all the answers. 'Model answers' will be provided at the end of the Seminar.

### **Timing**

You have 15-20 minutes to discuss each scenario. Suggested timing is given in the heading for each scenario.

### **Role of facilitator**

Each syndicate will be assisted by a facilitator, who will be responsible for monitoring time. The facilitator is not there to provide you with the answers. However they may occasionally raise issues or suggest factual assumptions on which discussion should be based.

### **Feedback**

Syndicates will *not* be required to formally present outcomes from the Case Study. However, there will be an opportunity to share experiences and raise questions in the panel session.

### **De-briefing session**

An additional informal session will be conducted on 10 August 2007 for those wishing to pursue further questions after having read the 'model answers'.

## THE STAGE

After the bird flu pandemic described in last year's Case Study<sup>1</sup> the Department for the Defence of Government Infrastructure and Essential Services (**DoDGIES**) gets an extreme makeover. Functions are abolished and moved every which way. But as ever your old mate Bruce Bover (ex A/g Deputy Secretary, DoDGIES) lands on his feet.

Bruce is appointed to head up a high-profile new agency within the portfolio, called 'Task Force 10', with responsibility for 'logistics and communication' in connection with APEC Australia 2007. In this role he will work closely with Ministers, and it seems to you that he is being groomed for a political career.

Bruce doesn't forget his friends - all good 'mates' since your last supper together<sup>2</sup>. Bruce recruits you and Mary Madeangel. Klaus Krescent is also engaged on some sort of consultancy basis, although details are not clear. The old team is back!

## THE PLAYERS

### *Bruce Bover*

Your boss in previous Case Studies.<sup>3</sup>

You first met in the *Mediwise* project. Then you worked together on the *SCAMGuard* project.

During the bird flu pandemic described in last year's case study, he used his political connections to be appointed as acting Deputy Secretary of DoDGIES, and later sought to ingratiate himself with the PM in an effort to secure a safe seat in Parliament.<sup>4</sup>

Impatient and autocratic, he wants to 'get things done'. Has no time for things that are too complicated<sup>5</sup> - such as intellectual property.



<sup>1</sup> See Case Study 3: '*Bird Flu and the Da Vinci Code*'.

<sup>2</sup> See Case Study 3: '*Bird Flu and the Da Vinci Code*'.

<sup>3</sup> Case Studies from previous AGS IP Law, Policy and Practice Seminars are available from: <http://www.ags.gov.au/whatweoffer/seminars/IPforumstudies/ipforumstudies.htm>

<sup>4</sup> See Case Study 3: '*Bird Flu and the Da Vinci Code*'.

<sup>5</sup> A sore point with him because of a past dispute with Copyright Agency Limited. CAL is a copyright collecting society which collects royalties for print copyright owners under various statutory and voluntary licence schemes.

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## Crunch, Chew and Snack

Your legal panel firm. A partnership between Phyle Crunch, Raelene Chew and the new boy Algernon Snack.<sup>6</sup>

You turn to Crunch, Chew and Snack whenever you feel you've bitten off too much!

Mystery surrounded Phyle Crunch's sudden excursion to London at the end of the previous Case Study.

Raelene has developed a sweet tooth - the consequence of a long-running trade mark case regarding colours used on chocolate wrappers.

You've heard Algernon is a keen practical joker.



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<sup>6</sup> The firm was originally called 'Pop, Crackle and Snap' but had to drop the name after an altercation with Kellogg (Aust.) Pty. Ltd.

<sup>7</sup> Phyle Crunch 'inadvertently' mislaid each odd-numbered page of the joint venture agreement relating to the Cooperative Research Centre for Experimental Epidemiology (CRC-EE), and later exploited the confusion to do a side deal relating to the 'Black Death Data'. Phyle blamed the photocopier - well he would, wouldn't he? See Case Study 3: '*Bird Flu and the Da Vinci Code*'.

### *Klaus K Krescent*

At one time employed in AGD as a software engineer, but has since built a reputation as a brilliant cryptologist and proponent of artificial intelligence. First came to notice in Case Study 2 when he published a paper on advanced data mining techniques in the Pacific Journal of Heuristic Computing. Engineered the scam behind *SCAMGuard*.<sup>8</sup> A gothic dresser with heavy beard - what's he trying to hide?

In last year's Case Study we suspected Klaus was involved in the untimely end of one Barry Bubonic, although at the time bird flu was blamed. We discovered he had been a grand master of the Priory of Sion before he established a splinter group, the Priory of Nimbin, over his alternative theory about the *real* meaning of the Holy Grail - however that's another story.<sup>9</sup>

Developed the *quantum digital cryptex* described below.



### *Mary Madeangel*



A lasting treasure, now even more ancient than before. She is the repository of much corporate knowledge about comings and goings in government.

Has been assistant to Bruce Bover in various roles in previous Case Studies, and in the course of that she has become a close friend of Raelene Chew from the legal panel firm.

Mary refers to DoDGIES affectionately as '*the Agency*', as if there were no other. Now calls Task Force 10 '*The Force*', a name which immediately sticks. A loyal worrier for the cause - whatever it might currently be.

Mary is pictured here whilst on holiday in Italy where she visited numerous churches, museums and art galleries.

We've always wondered what lies behind her enigmatic smile.

<sup>8</sup> See Case Study 2: '*NCrypt and the ScamGuard Affair*'.

<sup>9</sup> See Case Study 3: '*Bird Flu and the Da Vinci Code*'.

## Peta Plotter

Singer and artist with indigenous ancestry. Occasional activist for social and political causes.

You once cheated her out of a spot on 'The Block',<sup>10</sup> but she doesn't seem to bear a grudge. Later she opened up a coffee shop in Nimbin so that she could be close to Bruce while he plotted a political career. The *Peta Eater* becomes a convenient meeting place for local indigenous artists.

In the last Case Study Peta was engaged on a consultancy contract to develop visual elements for a publicity campaign on bird flu, but fell out with Bruce after a dispute about her 'moral rights'.<sup>11</sup> She has a distinctive birthmark on her bottom which became a celebrated trade mark for designer jeans.<sup>12</sup>

Will Bruce and Peta get back together?  
... Read on!

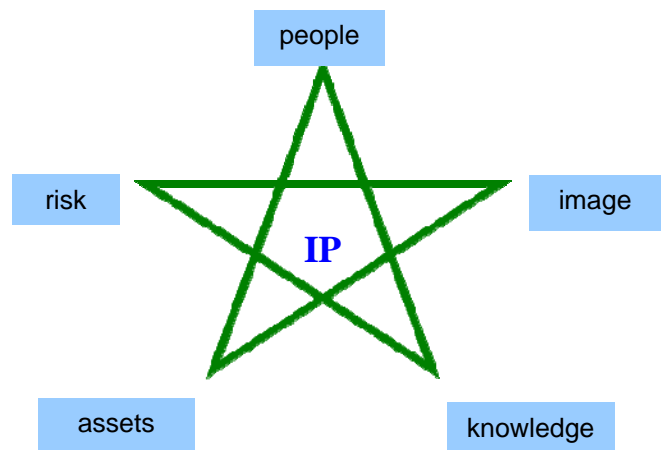


## You

You have acquired a reputation as an IP hotshot, and as a result all your exploits have featured in AGS IP Case Studies.

In your early days you learnt about franchising by helping develop a business strategy for a donut and coffee chain. This was followed by a stint on the *Mediwise* smartcard project. You had a short but stellar career on *The Block* before you were evicted under dramatic circumstances; but landed on your feet by scoring a plum job advising Channel Nine on character merchandising deals with the other contestants.<sup>13</sup> You then spent a period working on the *SCAMGuard* project.<sup>14</sup>

In the last Case Study you developed a conceptual model, based on the ancient pentangle popularised in Dan Brown's *Da Vinci Code*, to illustrate how IP relates to all the major areas of corporate governance.<sup>15</sup>



<sup>10</sup> See Case Study 1: 'Dodgy Data and the Mediwise Project'.

<sup>11</sup> The 'moral rights' recognised under our *Copyright Act 1968* include: (i) the right of integrity of authorship; (ii) the right of attribution of authorship; and (iii) the right against false attribution of authorship. Moral rights are personal rights of an author of copyright material, and cannot be assigned.

<sup>12</sup> See Case Study 3: 'Bird Flu and the Da Vinci Code'.

## *The quantum digital cryptex*

A modern device for protecting highly confidential information. To understand what it does some history is necessary.

In Dan Brown's *Da Vinci Code*, it is claimed that Leonardo Da Vinci invented the 'cryptex' device for storing secret documents. Any attempt to open it without the correct destroys the message inside. The modern use of encryption to protect documents is based on 'public key technology' which exploits the mathematics of prime numbers. But the possibility that someone might discover an efficient algorithm for cracking the associated 'private key' cannot be ruled out. If it occurred, the electronic authentication systems now in wide use would be vulnerable.

Klaus Krescent realised that encryption systems could make use of quantum effects, in particular the properties described by Heisenberg's uncertainty principle. Thus if a secret message composed of individual photons was intercepted it would be destroyed in the process of decryption.<sup>16</sup> The *quantum digital cryptex* developed and patented by Klaus Krescent is the first working implementation of this concept, to the author's knowledge.

We had hoped to include an illustration taken from the patent specification for the quantum digital cryptex. We assumed that copyright could not be asserted in such illustrations, which seemed logical enough since the underlying deal with patent system is that you get a monopoly in return for divulging details of your invention to the world. However Phyle Crunch has cast doubt on that interpretation and we have decided to play it safe. You will need to use your imagination!

The *meta* quantum digital cryptex is a premium model which makes its appearance in Scenario 5.

## *The Secret Opinions*

Contained within a vault within a vault within a vault in Robert Garran Offices. Their existence was revealed for the first time in last year's Case Study. As we saw then, Klaus used the prototype quantum digital cryptex to protect his collection of secret AGD legal opinions.<sup>17</sup> Some of these concluded that, for copyright reasons, the end of the world was imminent.

### A digital cryptex



### The quantum digital cryptex



<sup>13</sup> See Case Study 1: 'Dodgy Data and the Mediwise Project'.

<sup>14</sup> See Case Study 2: 'NCrypt and the ScamGuard Affair'.

<sup>15</sup> See Case Study 3: 'Bird Flu and the Da Vinci Code'.

<sup>16</sup> For an explanation of how this might work in theory, see: *Quantum Confidential*, by Simon Singh, in *New Scientist*, 2 October 1999, page 28.

<sup>17</sup> See Case Study 3 - 'Bird Flu and the Da Vinci Code'.

## SCENARIO 1: THE FORCE (20 MINUTES)

There is eight months to go before the APEC leaders meeting, and Task Force 10 (**The Force**) has just occupied swank new premises<sup>18</sup>. You are busily setting up your new office. Bruce is in his 'counting house' counting out his appropriations for Reg10 purposes, as there are a few contracts coming up. Mary Madeangel is decorating<sup>19</sup> the expansive foyer with a sequence of original 'dreamtime' paintings on loan from Artbank. She shows you a 2 square metre framed collage which she created from chocolate wrappers discarded by Raelene Chew over the course of the recent trade mark dispute. She is thinking of displaying this too in the foyer.

Klaus bursts in lugging a large briefcase. Barely acknowledging you, and against Mary's protestations, he charges into Bruce's office. They confer for nearly 2 hours.

By this stage you have discovered that the stated purpose of The Force (logistics and communication) is partly a smokescreen. You are a member of a secret cell of operatives within The Force whose purpose is to coordinate various security agencies to ensure timely responses to any security threat to APEC. As part of this, you are to use advanced data mining algorithms to collate information from multiple sources such as:

- a. information on APEC delegates, venues, timetables and activities;
- b. engineering detail about critical infrastructure, and information about transport movements through airports, shipping terminals and railways. There is also a proposal to establish real time connections to automatic number plate recognition (ANPR) systems operated by toll ways;
- c. intelligence reports from the security agencies (including email traffic obtained by covert surveillance).

A major lesson emerging from attacks in New York, Madrid and London (not to mention the Canberra bushfires) was incompatible systems for communication and decision-making by emergency response agencies. The Force has been active in efforts to standardise systems used by Australian agencies.

Staff on The Force have been issued with custom-designed protective clothing to cope with Chemical, Biological, Radiological and Nuclear (CBRN) threats.

Meanwhile Peta Plotter has taken over the lease on the ground floor café called '*The Consultancy*', which is located on the other side of the foyer. She displays her menu just outside the café entrance, next to the Tender Box.

On your instructions, Raelene Chew has prepared a template for an *IP Register* for The Force - see **Exhibit A**.

<sup>18</sup> The premises were previously occupied by the Advisory Council on Avian Influenza. ACAI was disbanded following a scandal over its failure to pay copyright fees to Phonographic Performance Company of Australia (PPCA) for its 'music on hold' service.

<sup>19</sup> Artbank is part of the Department of Communications, Information Technology and the Arts. Its mission is to promote Australian culture and 'the enjoyment of living with Australian art' by purchasing contemporary works and making them available for rent.

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## Scenario 1: Responses

1. Consider the Scenario and (making educated guesses) identify any IP that is likely to be relevant to The Force. Enter details where appropriate in the IP Register. You may regard this as a trial run to establish whether the template prepared by Raelene Chew will work for you or not . .

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. . . Refer to Exhibit A

2. After working with the table for a while, suggest improvements or variations to the format of the IP Register: For example: Are there any aspects that don't quite work? Is it helpful to break down the IP Register into 5 sections as shown? Can you think of any additional items that the template needs to allow for?

**SCENARIO 2: MAPPING IP PRINCIPLES 1-10 (15 MINUTES)**

You attend a talk given by Phyle Crunch to the Australian Corporate Lawyers Association (ACLA) in which he develops 3 connected themes:

- a. IP goes through different stages in its **life cycle**;
- b. each stage in the life cycle is likely to involve characteristic **transactions or relationships**;
- c. the choices you make re managing IP in these transactions/relationships are driven by relevant **policy considerations** - both whole-of-Commonwealth and agency-specific.

Working with these ideas you illustrate the 3 themes in the form of a table. You anticipate that this analysis will assist in developing an IP Policy for The Force. Your table enables you to explore a number of important correlations . . .

<i>Stages in IP life cycle</i>	<i>IP relationships</i>	<i>Policies and strategies relevant to IP decisions</i>
develop	staff	PEOPLE: recruitment, IT/internet/email use policy, training, rewards/suggestion schemes, moral rights, privacy, code of conduct, conflict of interest, confidentiality
procure	advisors	
recognise	suppliers	IMAGE: branding, PR strategies, website, protection of domain names, program names & trade marks, marketing
catalogue	business partners	
protect	other government agencies	KNOWLEDGE: IT strategic planning, policy on use of 'open source', management of software licences, internet and email use, document management, informal know-how, confidentiality
use	clients / customers	
share / commercialise / dispose / public access	distributors	ASSETS, MONEY & CONTRACTS: value for money, open and effective competition, conflict of interest, asset management/register, contract management/register, competitive neutrality
improve	general public	
defend	target groups in community	RISK: illegal software, exceeding licence terms, loss of IP rights/opportunities, access to necessary IP in disaster recovery, licence terms re escrow/backup, other contract mechanisms addressing risk
accounting / reporting	other stakeholders	

. . . For example you can see that the use of licensed software entails relationships with the suppliers of that software and the staff who use it, and there is a risk of infringing licence terms if software licences are not policed, e.g. through a register of licence agreements - see elements highlighted above.

At this point you learn that the Attorney-General has released a set of *IP Principles* which are to apply to FMA Act agencies. You go to see Phyle Crunch to discuss the new IP Principles. While there you show him the table you developed based on his presentation, and he is enthusiastic about your approach. Working together you devise a way of mapping the first 10 IP Principles to elements in your table. Phyle Crunch explains that each Principle can be formulated as a statement about *policy considerations* applicable to IP *transactions/relationships* that arise at some *stage(s) in the IP life cycle*. See **Exhibit B**.

## Scenario 2: Responses

1. *Complete the document developed by you and Phyle Crunch which shows how each of the first 10 IP Principles can be related to particular elements (life cycle stages, relationships, policies) from your table above . . .*

**. . . Refer to Exhibit B**

(NB: You are required to complete details in Exhibit B, using keywords from the table in Scenario 2. You and Phyle Crunch have already filled out the details relating to Principles 1 to 7. In your syndicate group you need to complete the details for Principles 8 to 10.)

2. *Do you have any other observations arising from this exercise?*

### SCENARIO 3: MINING THE CONFIDENTIALITY GUIDELINES (20 MINUTES)

1. You have been asked to prepare an RFT for a 'data mining' software solution which The Force will use to collate information from multiple sources in order to assess security threats. You anticipate that any solution of the calibre sought will require tenderers to demonstrate a capacity for thinking outside the box, and you expect that tenders may contain original approaches to The Force's requirement that tenderers will want to claim as 'commercial in confidence'. Bruce Bover says the standard practice is that unsuccessful tenders are to be kept confidential, but the successful tender should not be confidential after the award of a contract. You're not sure it's that simple, so you call Algernon Snack to discuss whether you should be entertaining claims of confidentiality. Algernon advises that it is a balancing judgment, but that unless we make *some* allowance for confidentiality of the supplier's 'proprietary methodology' (i) we may not attract the best bids; (ii) the bids we get may not be forthcoming about the nature of the solution proposed.

Bruce leaves for a meeting in the Minister's office. While he is away you do more research. You extract a few 'nuggets' from the new confidentiality guidelines<sup>20</sup> and put together the following clauses for the RFT:

#### Confidentiality

1. The Commonwealth undertakes to keep confidential any Confidential Information provided in tenders prior to the award of a contract and, in respect of unsuccessful tenders, after contract award. [*Certain exceptions are given to cover reporting to the Minister, and that sort of thing.*]
2. Notwithstanding clause 1, the Commonwealth may use and copy any part of a tender in order to conduct an efficient and effective tender process.
3. Tenderers may request in their tenders that specific information be treated as confidential following the award of a contract to it. The Commonwealth will consider any such request having regard to the matters covered by the Commonwealth's *Guidance on Confidentiality in Procurement*.

You show this to Bruce when he returns. 'Not happy!' he says. It is apparent that Bruce has ambitions that the solution developed for The Force could be of interest to security agencies in other countries, and he wants part of the action. You call Algernon Snack. Unfortunately he is at the snow fields. so as a last resort you ask to speak with Phyle Crunch. Phyle suggests a way to take the heat out of the issue: keep the above drafting, including clause 3, but provide in the selection criteria that claims for confidentiality under the clause will be *taken into account* in assessing value for money. Bruce is happy, and it is duly done.

2. Bover instructs you to specify in the RFT a form of contract that we expect the successful tenderer to sign. He wants to use a 'consultancy' form prepared by *Crunch, Chew and Snack* for The Force. You persuade him not to go down that path, because you anticipate that the contract will include features that a consultancy form can't really cope with. You instruct *Crunch, Chew and Snack* to develop a contract based on the *SourceIT* contract suite.

Meanwhile you learn that Peta Plotter has started collecting signatures for a petition which is displayed in *The Consultancy* - something about APEC and global warming.

<sup>20</sup> *Guidance on Confidentiality in Procurement* (FMG3) - see link in Bibliography.

### **Scenario 3: Responses**

1. *Comment on the confidentiality conditions in the RFT for the data mining solution. Is there anything else that might have been said? Do you anticipate any future issues or difficulties in applying the conditions?*

2. *Do you have any comments on the choice of contract form for the data mining solution?*

**SCENARIO 4: THE CONSULTANCY GETS A WORKOUT (15 MINUTES)**

1. The **RFT for the data mining application** has been out for a week. You have a chance conversation in *The Consultancy* café with Klaus Krescent, who knows pretty much all there is to know about data mining and artificial intelligence. You had assumed you might be licensing-in a more-or-less standard data mining application, perhaps with some software development to customise it for The Force. But Klaus says a far more important component of a successful implementation will be the incorporation of expert rules. The 'rule-set' will need to be contributed by experienced professionals in law enforcement and security, to instruct the software what correlations to look for in the data in identifying potential threats. The rule-set will need to be supplemented and refined continuously in the production system. In addition, Klaus says the software will be 'rewarded' each time it issues a valid alert, and ultimately will be able to use its experience to supplement the rule-set and adjust 'rule weights' on its own. This conversation causes you to re-evaluate your assumptions about IP aspects of the project - see *question 1 on next page*.

2. Coincidentally, no sooner do you return to your office than you receive a call from one of the prospective tenderers, **Intelligent Design Inc.**, based in Utah. - see *question 2 on next page*. They wonder if you can provide a prototype 'rule-set' for use in developing their tender; they could dummy up some rules, but they'd prefer to have something 'realistic'. You ponder the request - see *question 2 on next page*.

3. Bruce Bover has another contract he wants you to manage, and hands you the file: '**Eventz Management Pty Ltd - Media Centres for APEC**'. He explains that the contractor is to establish a 'media facility' for delegates to APEC Australia 2007 to provide real-time information on sessions, delegates, timetables, excursions, press releases, papers, draft communiqués, as well as internet access so that delegates can monitor press reporting. Accredited delegates will be able to exchange secure emails with officials in their home countries. The centre will provide facilities for printing multiple copies of documents for circulation. Indeed Eventz Management boasts that their 'unique event management system will meet all the information needs of delegates in an efficient, seamless and secure manner'. They are keen to showcase their system, and have offered a heavily discounted price in return for 'sponsor status', including putting their logo on official APEC stationery.

Bruce suggests that you draft the necessary contract using the standard *Consultancy* form prepared by *Crunch, Chew and Snack* for The Force. It cost a packet and he wants his monies worth. It contains IP provisions which you recognise as typical of consultancy contracts - see *Exhibit C*. You head back to *The Consultancy* café with Bruce to discuss the proposed contract, anticipating possible disagreement - see *question 3 on next page*.

As you go into *The Consultancy*, you observe activity around the tender box. Surely bids for the data mining project can't be rolling in so soon? Distracted momentarily you almost miss the meaningful glance that Peta gives Bruce.



## Scenario 4: Responses

1. *What are the implications of your conversation with Klaus Krescent for IP aspects of the data mining project?*

2. *What response might you make to the request from Intelligent Design Inc. for a prototype rule-set?*

3. *Would a standard consultancy form do for the contract with Eventz Management Pty Ltd relating to the media centres? If not what embellishments might need to be made?*

. . . Refer to **Exhibit C**

## SCENARIO 5: THE META QUANTUM DIGITAL CRYPTEX (15 MINUTES)

At a meeting with Bruce Bovver and Phyle Crunch you are brought up to date regarding the work being done by Klaus Krescent, which concerns development and commercialisation of the *Quantum Digital Cryptex* (QDC). You are informed that Klaus has patented the *Meta Quantum Digital Cryptex* QDC in his own name. As you know the QDC destroys the data in it if an attempt is made to decrypt it. It defeats all known methods of forensic detection, and for that reason should not be allowed to fall into the wrong hands. Klaus Krescent Pty Ltd was formed to develop an improved model, the *Meta Quantum Digital Cryptex* (MQDC). Any attempt at decryption destroys not just the data but the MQDC itself, so that the underlying technology can't be reverse engineered and copied. It is proposed to implement the concept in the form of a secure laptop, which police, military and security personnel can take with them while travelling.<sup>21</sup> However Klaus Krescent Pty Ltd doesn't have adequate finance for this development work and has turned to The Force seeking a 'co-development' agreement. Bruce envisages that given the powerful security considerations the IP in the MQDC must be controlled by The Force; however Klaus Krescent Pty Ltd will be appointed as distributor.

Bruce asks Phyle if he has a standard 'co-development agreement' that could be used. Phyle rolls his eyes. 'Well - not exactly' he says. 'A co-development agreement could mean half a dozen things. The sort of relationship you want to create will depend upon your Purpose.' he speaks as if 'Purpose' has a capital 'P'. 'Please explain' says Bruce. In response, Phyle tables a little list, which he explains he has adapted from the *IT IP Guidelines*:

### **Common Purposes underlying Commonwealth dealings in IP**

- a. to make money by sale of products embodying IP, or by incorporating IP as part of a service delivered to a customer
- b. to procure a product or service or to develop a solution (e.g. an IT system) for the benefit of the agency
- c. to defray acquisition / development cost in relation to a solution or application or research intended initially and/or primarily to meet agency needs (i.e. a combination of the preceding two situations)
- d. to assist Australian industry
- e. to subsidise a particular target group of consumers
- f. to promote the image of the agency or the Commonwealth, and/or to protect associated insignia or brands
- g. to prove a point, e.g. that a particular technology or approach is viable
- h. to disseminate important messages to the community or particular communities
- i. to protect the integrity of agency or Commonwealth material
- j. to develop a product or service that embodies a standard, or promotes inter-operability in a particular sector or field
- k. to comply with an obligation, e.g. a statutory requirement that a particular category of material be published or tabled
- l. to recognise (by attribution and/or appropriate tangible rewards) the creative contribution of staff to the agency's intellectual capital or corporate image

Bruce asks you to 'work on it'. He dismisses you, so that he and Phyle Crunch can discuss an important 'publication agreement'.

Mary hangs the chocolate wrapper collage in the foyer.

<sup>21</sup> This follows a spate of incidents in which sensitive information had been compromised because travellers had forgotten their laptops in airports.

## Scenario 5: Responses

1. *What did Phyle Crunch mean when he said that a co-development agreement could mean several different things? Can you identify some possibilities?*

2. *What 'Purposes' do you think are relevant to the 'co-development' arrangements relating to the MQDC?*

**. . . Refer to the list provided by Phyle Crunch**

3. *What sort of deal should we make with Klaus Krescent Pty Ltd, based on what you know?*

## SCENARIO 6: IN WHICH WE LEARN THE SECRET OF MARY MADEANGEL (15 MINUTES)

You have observed Bruce on the phone to the lawyers, *Crunch, Chew and Snack*, rather a lot lately. Two months before the APEC leaders meeting you find out why, and it is all to do with Mary Madeangel.

Bruce explains that Mary's real job is as an 'official historian', appointed to trace the history of APEC from its inception in 1987 (as an Australian initiative). For this purpose she has been granted special, scholarly access to all cabinet documents and other Commonwealth records.<sup>22</sup> Her placement in *The Force* is designed to enable her to observe APEC planning processes from the inside, without attracting undue attention which would inhibit frank disclosures in her presence.<sup>23</sup> The glossy, coffee-table book, called '*The Road to APEC 2007*' will be published by Longshot Books Ltd.

But there is a problem which has Bruce worried. He had contacted Phyle Crunch initially asking for a standard publication agreement. When nothing came of that after a week he called Raelene Chew with the same request. And when nothing came of that after a further week, he tried Algernon Snack. Due to lack of communication in *Crunch, Chew and Snack*, Bruce has now received three different drafts of a 'standard publication agreement'.

The letter from Phyle Crunch attaching his draft publication agreement (for which Bruce has been invoiced \$3,800) explains:

I refer to your telephone instructions of 7 July in which you explained that Mary Madeangel has approached *The Force* for access to current and historical APEC material, which she may quote from in her proposed publication. She requires a licence to reproduce material which is Commonwealth copyright. I gather she has been working in *The Force* for some time on this basis and you both require that the understanding be formalised. I couldn't agree more. Mind you, *The Force* may not be in a position to grant a licence for use of material in which the Commonwealth does not own copyright. So in the draft (attached) I have avoided giving any blanket warranties and left it to Mary to seek all necessary third party copyright permissions. I have made provision in the Schedule for you to insert a licence fee that Mary will pay (if any). I have also provided in the Schedule to specify the research assistance she is to get from staff in *The Force*, and you may or may not specify a fee for that. You can also stipulate the form of any acknowledgment (of assistance by *The Force*) that she is to arrange when she publishes her work.

The letter from Raelene accompanying her draft (costing \$3,900) states:

I refer to your phone call on 14 July re the publication agreement, and am sorry about the delay. Attached is an initial draft. I gathered from your urgency that it will be a major project for *The Force*, and will reflect political, historical and cultural currents that are uniquely documented in the records you hold. I think you said it would come out in conjunction with the leaders meeting in the final week. Knowing Mary as I do, I'm sure she will be an excellent choice. As usual with an agreement like this, I have explicitly provided that all copyright will be owned by the Commonwealth. I have provided a place in the Schedule for you to insert the details of payments (including instalments if any) that *The Force* will pay Mary for her work. Appropriate respect is given to her moral rights - see clause 8.5.

You will of course need a separate agreement with the publisher you have chosen. Just let me know who it is and what royalties they are going to be paying us, and I'll do an agreement for the same cost as this one. It can provide for you to get a supply of free copies, so you can be handing them out at the launch. PS: I am a personal friend of the Minister and would love to attend.

The letter provided with Algernon's draft (cost \$3,300 plus GST) says:

I refer to your phone call on 21 July and sincerely apologise that you have been inconvenienced by our Office's delay in this matter. Attached is a draft agreement with the publisher, Longshot Books Ltd, which should be suitable. The Recital has a place for you to fill in the date of their initial 'Proposal'. I understand their publication will include a contribution from one of the staff members in *The Force*, Mary Madeangel. I wasn't clear from our very brief discussion whether there were other authors? That raises the question whether we should just leave it to the publisher to deal with the author(s) separately. It is probably easier

<sup>22</sup> This type of access to 'Commonwealth records' which are not yet in the 'open access' period under the *Archives Act 1983* is governed by so-called 'special access conventions', for which the policy is determined by the Department of the Prime Minister and Cabinet.

<sup>23</sup> You make a note to see her about deleting some expletives you recall having used earlier in this Case Study.

that way, because all the details about copyright ownership, and recognition of moral rights, will be for them to haggle over with the author(s). I assume *The Force* is to be given some attribution and have provided for you to specify the form of that. However the agreement makes it plain that Longshot are responsible for risks such as defamation, and I have put in the usual indemnity.

You head down to *The Consultancy* for a double shot coffee.

## Scenario 6: Responses

1. *Of the three invoices rendered, which one should we pay?*

2. *If you were starting from scratch, what would **you** say in drafting instructions for preparation of the publication agreement?*

**. . . Refer to IP Principles 11 - 15**

3. *Do you have any other thoughts on the sequence of events described in this Scenario?*