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## AGS IP LAW, POLICY AND PRACTICE SEMINAR, 24 NOVEMBER 2010

### Case study: *THE MASTERCOOK CHALLENGE*

#### Participants' version

This Case Study consists of three 'scenarios'. It includes certain IP questions for discussion at the end of each Scenario.

Syndicates will have a total of 45 minutes to discuss the scenarios. (Suggested timings for each scenario are indicated in the Case Study). Try to confine yourself mainly to IP issues. You may see issues in other areas, e.g. privacy, procurement, probity, etc. While you may wish to note these issues, the main focus should be on IP.

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 assumptions on which your answers are based. And remember that identifying questions (both factual and legal) is more important than knowing all the answers. 'Suggested answers' will be provided at the end of the Seminar.

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.

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 at the end of the exercise (approximately 15 minutes).

The Case Study continues some of the plot lines and characters from [previous AGS Case Studies](#). However you do *not* need to read the earlier Case Studies.<sup>1</sup>

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<sup>1</sup> Case Studies from previous AGS IP Law, Policy and Practice Seminars include:

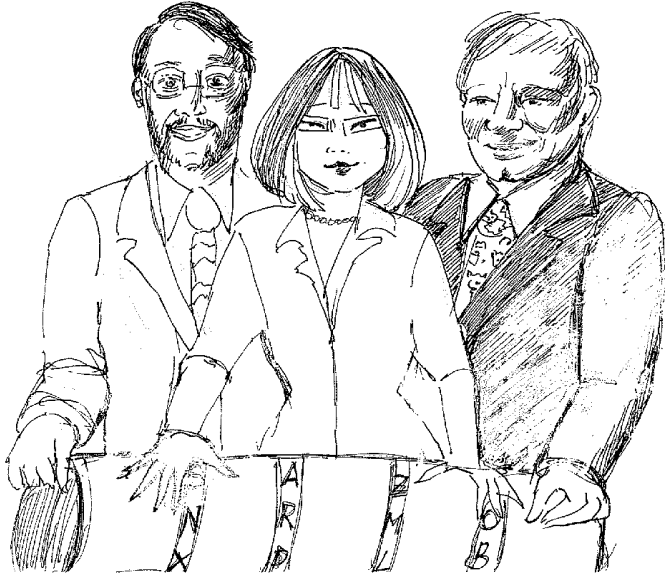
- *Dodgy Data and the Mediwise Project* (2004)
- *NCrypt and the SCAMGuard Affair* (2005)
- *Bird Flu and the Da Vinci Code* (2006)
- *The APEC Adventure* (2007)
- *Goings on at the 2020 Summit* (2008)

For those interested in following up previous Case Studies, they are available from:

<http://www.ags.gov.au/whatweoffer/seminars/IPforumstudies/ipforumstudies.htm>

## The players

### *The 'Legal Solutions Specialists' (sometimes still known as 'Crunch, Chew and Snack')*



A firm which was established as a partnership between Phyle Crunch<sup>2</sup>, Raelene Chew and Algernon Snack. Commended for their legal work to protect Commonwealth IP in the *quantum digital cryptex* (shown). Appointed to the legal panel of the Department of Public Engagement and Transparency (**PET**). They now style themselves as the 'Legal Solutions Specialists'.

Raelene has recently freshened up the firm's signage to an attractive blue and red design which she says is designed to create a vibrant working atmosphere within the office. Her framed collage of blue and red brightly coloured chocolate wrappers fits in perfectly and now has pride of place in the foyer.

Algernon has gotten into the spirit of things and has acquired quite an impressive collection of red and blue designer ties to match with the décor.

### You

Due to improving economic conditions, quite a lot of IP work has been coming into the office. Based on your reputation as an IP hotshot, *The Legal Solutions Specialists* has sought you out to assist with all of this extra work.

Specifically, you have been asked to advise on a range of IP issues arising from the Mastercook Challenge as set out in the case study below.

<sup>2</sup> Phyle Crunch, has now retired from full time practice, but drops by now and then to lend a helping hand. He has recently developed a wanderlust, previously untapped (but fuelled by a strong Australian dollar) which took him out of the country, to the Taj Mahal and sailboating on the Ganges for 6 months this year.

## *Bruce Bover*

A mover and shaker in the Canberra bureaucracy. He reminds you in many ways of Donald Trump. He has appeared in reality TV shows in an attempt to pave the way for a political career.

Your paths have crossed in a number of previous adventures. He was previously responsible for implementing the vision of the Australia 2020 summit.<sup>3</sup> He is now the Deputy Secretary of the Department of Public Engagement and Transparency which is a key player in implementing the vision of Gov 2.0.

Impatient and autocratic, he wants to 'get things done'. Has no time for things that are too complicated - such as intellectual property. His colleagues surreptitiously refer to this tendency as the '*Bover effect*' - as in 'Don't bover me with all the detail'.



## *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.

She 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.

She is a key player in the work of the Department of Public Engagement and Transparency. A loyal worrier for the cause - whatever it might currently be.

*Mary Madeangel*

<sup>3</sup> See Goings on at the 2020 Summit (2008).

### *Peta Plotter*

Singer and artist with indigenous ancestry. Occasional activist for social and political causes. Once ran a cafe in Nimbin called the *Peta Eater*, which was a popular meeting place for local indigenous artists.

Drifts in and out of relationship with Bruce.

Peta previously scored a place at the *Australia 2020 Summit*.

She is now employed as a manager in the media and communications division of the Department of Public Engagement and Transparency, where she is able to apply her graphic design skills to the role.

She is surprised at how much she is enjoying it all.



*Peta Plotter*

## Background

### **(In which the Deputy Secretary for PET comes up with a grand plan for public engagement)**

Following the machinery of government (**MoG**) changes, a new Department of Public Engagement and Transparency (affectionately known as '**PET**') has been created to assist in dealing with the challenges of agencies moving into the Web 2.0<sup>4</sup> world.

The role of PET is to foster greater interaction between government and members of the public with a view to increasing the public's appreciation of the government's work, its institutions, in a spirit of openness and collaboration between government and its citizens (and to get the government returned in the process).

To kick-start PET's agenda, Bruce Bover, the Deputy Secretary of PET, has the fabulous idea of approaching the producers of the television hit of the year 'Mastercook' to strike up a deal for PET to host a cooking challenge in the forecourt of Old Parliament house and potentially extending into the grounds of the Aboriginal Tent Embassy.

The idea is to showcase one of the iconic Australian institutions (namely, Old Parliament House) and also Australia's culinary transformation through the years as reflected in the foods contestants associate with Australian Prime Ministers past and present.

Mary Madeangel is nominated by Bruce as the person best placed to make the approach to the producers of Mastercook.

The producers of Mastercook are captivated by the idea. They ran a challenge last year with the Department of Flight and Navigation which involved contestants having to cook up a macaron tower for Defence Force officers at a training camp at HMAS Watson overlooking Sydney Heads and using only the barest of cooking equipment, including trangeas, cooking tongs and outdoor bush ovens. It was a hit.

In this latest proposed Mastercook 'Prime Ministers' Challenge, the contestants must create a dish that best reminds them of a past or present Australian prime minister. Bruce insists that, to give PET greater public exposure, one member of his staff - namely, his sometime partner, Peta Plotter, who is a manager at PET - should also be a guest contestant on the show.

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<sup>4</sup> Web 2.0' has been defined to mean 'technologies that encourage online interaction, collaboration, sharing and the creation of user-generated content'. Examples include agency blogs and social networking platforms such as Facebook, YouTube, Twitter, Flickr and Wikipedia.

One complicating factor is that the producers of the show are running a little behind schedule and as a consequence they send the following letter to Mary confirming arrangements:

*Dear Mary*

*It was great to speak with you yesterday. This letter is to confirm that, as discussed, due to programming imperatives, filming of the Mastercook challenge at Old Parliament House will need to take place at 2pm this Friday. All of our 'usual arrangements' in relation to this Mastercook challenge will apply. We'll send you any relevant documents for signing after the filming.*

*We trust that your Department agrees with this proposal.*

*Yours sincerely*

*Ron Ronaldo*

*Executive Producer  
Mastercook Enterprises*

**Scenario 1 (The day of the Mastercook 'Prime Ministers' Challenge) (20 MINUTES)**

The day of the Mastercook Prime Ministers Challenge arrives. The weather is fantastic. To take advantage of the weather, filming of the challenge begins in the forecourt of Old Parliament House and continues outside in the grounds of the Aboriginal Tent Embassy, where the contestants are filmed with their culinary masterpieces.

Photographs of the event are taken by both the producers of the show and also Mary Madeangel.

The filming appears to go without a hitch, apart from a minor mishap which occurs when a member of the crew spills a pot of beef gravy onto one of the chalk murals in the grounds of the Aboriginal Tent Embassy.

Mary-Anne Grosbie is announced as the winner of the challenge with her modern take on 'lamb and cauliflower au gratin' which is intended as a tribute to Robert Gordon Menzies. She is filmed and photographed standing proudly next to a photo of him which is displayed inside the Museum of Australian Democracy at Old Parliament House.

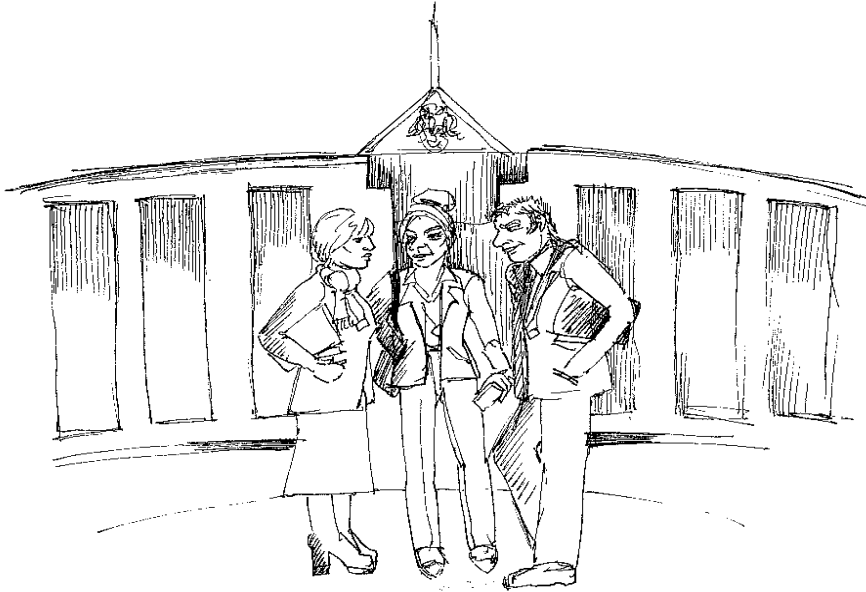
And Peta Plotter is also surprisingly impressive with her 'oven-baked rigatoni with wild boar salami' dish (courtesy of the Jamie Oliver website) in honour of her hero Gough Whitlam. She displays great panache and stage presence in the role.

(However, Mary is a bit worried because Peta told her that she had accessed the written recipe on the Jamie Oliver website after her paid subscription ran out - due to a temporary *glitch* on the site which gave her access. But Mary, who knows a bit about copyright from previous misadventures, is concerned that Peta's creation of the dish on the Mastercook 'Prime Ministers' Challenge will constitute an unauthorised reproduction of that recipe).

In any event, the Minister for PET ('Tim') is delighted with the outcome of the Mastercook Challenge and appears in a number of publicity shots taken at Old Parliament House and in front of the mural and several items of artwork at the Aboriginal Tent Embassy.

As fate would have it, on the morning of the filming, you arrive back at work after your four week 'whirlwind' Trafalgar tour of Europe, where you enjoyed the new-found strength of the Aussie dollar.

You did a small item of legal work for Bruce before you went away on your trip. You must have made quite an impression because Bruce now rings you on his mobile to you to tell you what has happened. 'It's all very exciting isn't it? Gotta go now, bye', he says, before rushing off to join the Minister in a 'photo op'.



**Q1 Identify the items of IP material that may be part of the filming and production of the Mastercook Prime Ministers Challenge**

**Q2 Who owns IP in the items of IP material that are part of (or arise from) the filming and production of the Mastercook Prime Ministers Challenge and why?**

**Q3 Who should own the IP in any of the items of IP material discussed above? What other arrangements for dealing with the IP should be considered?**

**Q4 What *other* IP issues could arise from the filming and production of the Mastercook Prime Ministers Challenge?**

**Q5 What contract documentation or other documents relating to IP rights should have been signed prior to filming commencing?**

**Q6 Is Mary correct in saying that the fact that Peta has made the dish in accordance with the Jamie Oliver recipe means she could have engaged in unauthorised reproduction of the recipe?**

## Scenario 2 (in which PET's new blog is born)

### (10 MINUTES)

Shortly following the Challenge, in accordance with their usual practice, the producers of Mastercook send a preview copy of the Mastercook Prime Ministers Challenge video and some accompanying photos to Mary Madeangel together with a note which says:

*'For your review and comment - PS - Please can we have your comments as soon as possible as we're intending to broadcast the show in the next three weeks.'*

Bruce finds Mary watching the preview video in her office. The video sends him into a frenzy:

*This is just the thing for our new 'MY-PET' website! Mary, please get Peta's marketing team to put this video and the photos up on our website to coincide with broadcast of the show on Network 12. We need to strike while the iron is hot! This will put PET on the map.*

*I've heard that Creative Commons licensing is all the rage at the moment. From what I can gather from the recently updated Statement of IP Principles issued by the Attorney-General's Department, all Commonwealth websites must be governed by Creative Commons licence terms and conditions. So, all we have to do is to whack a CC logo onto the website and she'll be right mate.*

*Oh and by the way, I think we should call the video the MY-PET Mastercook Challenge. Can we get a logo designed around this mark and lodge a trade mark application for this logo as soon as possible?*

Mary dutifully contacts Peta with Bruce's instructions.

She also applies to register the **MY-PET Mastercook Challenge logo** (incorporating a 'serpentine' device) in relation to 'printed publications and marketing material, including those publications and material provided online; videos; marketing and public engagement activities; cooking demonstrations' (in various classes of goods and services).

Mary, who is a bit worried about all of this, later comes to see you to check if there are any issues.

**Q1 Is Bruce correct in saying that Creative Commons licensing is required to be used under the Statement of IP Principles? If not, what is the correct policy position?**

**Q2 What would Bruce need to consider prior to licensing under CC licence terms?**

**Q3 Are there any issues associated with Bruce's idea to use and register the MY-PET Mastercook Challenge logo as a trade mark? What are they?**

**Scenario 3 (in which IP infringement concerns / IP management issues are raised)****(15 MINUTES)**

The uploading of the Mastercook Prime Ministers Challenge video on the MY-PET website has recently increased internet traffic to the website by 300% - particularly as the video was available on the website 15 minutes before the Mastercook show was broadcast on Network 12 - and also given the intense public interest in the outcome.

Bruce considers this to be an outstanding result and the gang at PET - particularly Bruce - are well pleased with themselves. The logo MY-PET Mastercook Challenge incorporating a serpentine device features prominently on the home page of the MY-PET website.

Bruce has now directed Peta's marketing team to cross-promote the MY-PET website. In particular, he wants hyperlinks to be posted on the MY-PET Facebook page directly to the Mastercook Prime Ministers Challenge video and photos. Peta also uploads the video to the MY-PET YouTube site.

Unfortunately, PET's euphoria is short-lived. After the broadcast of the Mastercook Prime Ministers Challenge, Mary receives a stern letter from the producers of the Mastercook alleging 'serious breaches of intellectual property rights which will be dealt with by our lawyers.'

To top that off, Mary receives a further email from the executive assistant to Jamie Oliver demanding that the Jamie Oliver '10 delightful dishes' recipes which an anonymous user posted in a blog entry on the MY-PET website be taken down immediately. The user had posted the recipes: 'to share with Australia some recipes which remind me of my Prime Ministerial heroes over the decades'.

Mary contacts you in a flap.

**Q1 What IP issues potentially arise from the use of the video and photos on the MY-PET website?**

**Q2 How would you advise Mary to handle the letter of demand?**

**Q3 What issues arise in relation to the Jamie Oliver '10 delightful dishes' recipes?  
How should Mary deal with this situation?**

**Q4 How can PET do things better in the future in relation to management of IP on its social media sites and management of its IP generally - so as to comply with the Statement of IP Principles?**