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Managing Intellectual Property

The Global IP Resource

IP'S MOST IMPORTANT FIGURES

01 July 2005

Over the next 16 pages, MIP presents its third annual list of the most influential people in the IP world. Join us as we reveal the 2005 top 50

Who are the most influential people in IP? The politicians who push through new legislation that changes the way businesses and consumers behave? The judges who ensure that those rules are upheld and whose decisions sharpen the cutting edge of IP law? Or the business people and their lawyers whose innovative use of IP boosts its economic value and raises the profile of an easily overlooked asset? Or the lobbyists who campaign on their behalf? Or the regulators who manage the IP protection process? The activists who challenge the way we think about IP rights and inject insights into the way that global IP rules affect individuals in places we may never have heard of into dry legal debates? Or the academics whose high ivory towers enable them to see the big IP picture more clearly than IP practitioners caught up in the minutiae of day-to-day IP work? Or the inventors and creators without whose work there would be no IP industry?

Representatives of all of these influential sectors are included in the list. Of course, the *MIP* team considered many more people than those named here and only finalized the list after much discussion and consultation with IP practitioners.

Although we believe the list represents the most important trends in IP theory and practice, it is not a survey and it is not scientifically compiled. No one has paid to be included; no lobbying has taken place. The order of appearance in the list does not reflect any ranking.

THE MIP 50 AT-A-GLANCE

Are the Americans losing their influence in IP? According to *MIP's* list of the world's 50 most influential people they could be. This year 16 make it on to our list, compared to 21 last year and 23 in 2003.

More judges are included this year, a reflection perhaps of the growing importance of judicial decisions in areas of law where legislation lags behind technological developments. This year eight are listed, from jurisdictions as diverse as India, China, Japan and the US. We have included eight academics, including IPKat, the feline creation of Jeremy Philips and Ilanah Simon, and authors Adam Jaffe and Josh Lerner. There are four politicians, 13 regulators, 12 in-house counsel and representatives from industry associations, two campaigners, one inventor and two people who do not fit comfortably into any of these categories.



WU YI

Chinese vice-premier

Chinese vice-premier Wu Yi has an important year ahead of her, defending the country's efforts to improve IP enforcement and spearheading a group set up to develop a coherent home-grown IP strategy. With the US making increasingly strident noises about bringing a WTO complaint over China's IP record, Wu Yi has to deliver. But she could find that China's bargaining power over IP could be greater given the US's concerns about being swamped by Chinese textiles after a global quota system was phased out earlier this year. Despite pronouncements by Secretary of Commerce Carlos Gutierrez on a recent visit to Beijing that

"we don't believe that something as fundamental as IPR needs to be negotiated," there may have been a subtle change in China's ability to resist US pressure over fakes.



GERHARD BAUER

DaimlerChrysler

Gerhard Bauer has been in charge of one of the world's best-known and most valuable brands since 1992: the Mercedes-Benz name and its three-pointed star badge. In 1998 Bauer's IP tasks expanded following the company's merger with Chrysler and he subsequently took over as head of the trade mark, design-patent, domain name and IP contract department of DaimlerChrysler.

Bauer is a frequent speaker on trade mark issues, drawing from his experience managing a coveted portfolio of marks, which includes two brands, Mercedes and Chrysler, that each have their own distinct reputations. He is a member of the board of directors at INTA and a frequent speaker for WIPO where he lobbies hard for a more harmonized and simpler IP system. Earlier this year Bauer was elected chair of UNICE's trade mark and designs working group, a role that allows him to influence discussions on OHIM's proposal for registration and renewal fees, and the European Commission's plans to foster greater cooperation between national and international trade mark offices and member states.



FRANCIS GURRY

WIPO

Francis Gurry is a WIPO old hand. He joined the organization in 1985 and is now deputy director-general. The commercial IP world knows him for his work on the Patent Cooperation Treaty and electronic commerce, but in recent years he has most often been associated with efforts to create a system to protect a long-overlooked intangible asset - traditional knowledge.

The issue is likely to be at the top of his work schedule over the next five months in the run-up to the sixth WTO ministerial meeting to be held in Hong Kong in December. In recent months developing countries have been pushing to put the debate on traditional knowledge back on the international trade agenda. The IP system is playing a key part in the discussions, with developing nations demanding that systems of indigenous and traditional knowledge have a place in the patent system.

Gurry is also the founder and head of WIPO's Arbitration and Mediation Center, which attempts to resolve conflicts between holders of domain name and trade mark rights. In June this year, Gurry published WIPO's proposal for a single protection system for all new generic top level domain names (gTLDs), which he thinks will help protect IP owners and tackle the cybersquatting phenomenon.

The report was produced for ICANN, the internet-governing body, which recently announced plans to introduce more gTLDs, following the introduction of seven new gTLDs (.aero, .biz, .coop, .info, .museum, .names and .pro) in 2000. Gurry will continue to play a key role in WIPO's internationally-recognized Uniform Domain Name Dispute Resolution Policy (UDRP) and in the further development of a harmonized domain name protection system.



KARL-HEINZ FEZER

University of Konstanz

Karl-Heinz Fezer is one of Germany's leading IP academics, but IP practitioners know him best as the author of one of the most referred-to texts on trade mark law in Germany (*Kommentar zum Markengesetz, zur Pariser Verbandsübereinkunft und zum Madrider Markenabkommen*). Fezer is an enthusiastic supporter of efforts to push the boundaries of trade mark law and was one of the first IP specialists to promote protection for colour marks in Germany. Fezer has been professor of civil law, trade law and IP law at the University of Konstanz in Germany since 1983 and honorary professor at the faculty of law of the University of Leipzig since 1996. He has sat as a judge with the higher regional court in Stuttgart since 1989, helping to put theory into practice.

JOACHIM BORNKAMM

Judge



Two years after becoming a judge with the courts in Freiburg in 1978, Joachim Bornkamm took up a position in Germany's Ministry of Justice, securing himself a 20-year career as an IP judge. He switched to the Federal Supreme Court in 1985 where he took up a position as an assistant judge in the IP and antitrust division, spent eight years in Karlsruhe's appellate court as the judge in charge of trade mark, patent and competition cases, and was called to join the Federal Supreme Court as a judge in the IP and antitrust division in 1996. Today Bornkamm ranks among Europe's most prominent IP judges. He is best known in Germany as an author, a prolific conference speaker and a judge striving to strike the right balance between monopoly IP rights and free trade.



ERIK NOOTEBOOM

European Commission

Erik Nooteboom is head of the industrial property unit in the European Commission's internal market directorate-general and is described by many as the key man for IP in Brussels. Indeed, Nooteboom has held responsibility for the Community patent, the computer-implemented inventions directive, the Community trade mark and the Community design, and the enforcement directive. In addition he deals with any WIPO and WTO related matters and works in close cooperation with OHIM and the European Patent Office.

Producing results is what matters for the Dutchman, who joined the Commission 1987 from a background as legal adviser. He has been in his current position since 1998. Without his hard work in the past year, it remains doubtful how smoothly the linkage between the EU's OHIM-administered Community trade mark system and the WIPO-administered international trade mark system, the Madrid Protocol, would have been put in place. The link was a historical step in the IP field, allowing trade mark owners around the world to extend their existing registration to all 25 EU countries and CTM holders to extend their registration to all Madrid member countries.

Nooteboom is also behind the discussions to abolish national searches as well as proposals to reduce CTM registration and renewal fees. More recently he initiated a process aimed at fostering more cooperation between national trade mark offices and OHIM, a move pushed for by EU member states.

In the coming year Nooteboom will play an important role in the Commission's plans to improve the EU patent system and restart the Community patent discussions, which stalled in May 2004 after member states failed to come to an agreement on the system's scope. Nooteboom has clearly expressed his frustration about this and as long as he is around, IP owners should not give up their hopes for an EU-wide patent system.

The most controversial issue Nooteboom has been involved in during the past year is the so-called software patent directive. Debates seemed to have reached their climax at the end of last year when discussions between member states, the European Parliament and the Council of Ministers stalled and the Commission threatened to scrap the law entirely. But the Commission's continued discussions with all those involved eventually pushed the draft law further through the EU's law-making process, although it finally hit the buffers in the European Parliament in July this year. The Commission is also expected to push forward EU accession to the international design registration system, the Hague Agreement.

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CHIEF JUDGE MICHEL

Federal Circuit

As the head of the US Court of Appeals for the Federal Circuit, Michel has an unassailable position on *MIP's* list. Like fellow Federal Circuit judges Randy Rader and Pauline Newman, Michel also features on many conference panels, readily engaging with the IP community. The coming year will see Michel's court issue an *en banc* ruling in the *Phillips v AWH* case, which will decide the future of US patent claim construction interpretation.

THIERRY SUEUR

Air Liquide

Frenchman Thierry Sueur is one of the most influential industry voices on IP. As



well as serving as vice-president of IP, and of European and international affairs at industrial gas group Air Liquide, his outspoken nature and willingness to get involved in the IP debate has put him in a number of influential positions, particularly in the patent field. From 2001 to 2002 he was president of LES International, since 1997 he has chaired the IP committee of the French Industry Federation, and since 1999 he has been vice-chair of the patent working group of UNICE, Europe's industry lobby group.

Sueur is a frequent speaker on patent issues such as the PCT, the Community patent, the London Agreement (which aims to reduce patent translation costs) and the software patent directive. "The patent is the weapon of the weak against the strong," he said earlier this year, summarizing his views on patents and explaining his support for software and computer program patents in Europe.

Sueur joined Air Liquide in 1992, after nine years in private practice as a European patent attorney and eight years as vice-president of IP at Thomson.



JOSEPH STRAUS

Max Planck Institute

Joseph Straus is one of the most respected IP academics in Europe. As the head of the patent department at the Max Planck Institute for Intellectual Property, Competition and Tax he is a regular figure on the IP conference circuit and a prolific author on subjects from European and German patent law, biotechnological inventions, employee invention law, international protection of IP rights, technology transfer and IP arbitration. Alongside his academic commitments, Straus also holds the influential position of consultant to international bodies such as WIPO, the OECD, the European Commission and the World Bank.



JON DUDAS

USPTO

After successfully securing additional funding for the USPTO - an increase of \$200 million for each of the next two years - Dudas has overseen an agency focusing its efforts not only on improved patent quality, but also international relations.

Under Dudas's leadership, the USPTO has taken an active role in US government efforts to crackdown on international piracy and counterfeiting of US goods, particularly the Strategy Targeting Organized Piracy (STOP!). As a result of his efforts, the USPTO is holding seminars across the US to educate companies about how to protect themselves better against IP theft in China and other nations. He has also taken part in delegations to China to urge greater IP enforcement in the country, lending the authority of his position to similar calls by other US officials. And his international focus is not just on China: Dudas recently oversaw USPTO involvement during negotiations at WIPO over patent harmonization and development-related issues.

On the home front, Dudas continues the reform effort. While managing projects to introduce greater examiner scrutiny - central to his pledge to improve patent quality - Dudas has also revealed reforms that the agency hopes will speed up patent prosecution and save applicants about \$30 million a year. Among the plans are tweaks to the rejection, appeal, and reexamination procedures, and greater transparency of USPTO information. The latter will offer more insight into the Office's backlog, breaking down pendency times by section and group, rather than simply giving blanket figures for the agency as a whole.

Perhaps Dudas's greatest achievement to date has been to maintain strong backing from the IP community. Despite pushing through some unpopular reforms, such as an increase in fees despite continued diversion, Dudas enjoys a level of support from the IP constituency for his reforms and his stewardship that was far less evident under the leadership of his predecessor, James Rogan.



JAMES DYSON

Inventor

Nearly 30 years ago an inventor had the idea of a bagless vacuum cleaner while he was renovating his house. He spent five years working on the idea, and 5,127 prototypes later, in 1983, came up with his ideal cleaner. The story of how James Dyson became one of Britain's most famous and successful inventors is one of grit and determination.

After creating his first vacuum cleaner, Dyson's efforts to license it in the UK and Europe proved fruitless. The market was dominated by big brands such as Hoover and Miele and companies were thriving on the bag replacement business. He took his product to Japan and in 1986 started to sell his first vacuum cleaners. In 1991 his invention won the International Design Fair prize in Japan, and became a status symbol in the design-conscious country. Two years later he started producing and selling his first Dyson vacuum cleaners in his home country and today Dyson has secured around 50% of the market for upright vacuum cleaners in the UK.

While Dyson's products were a hit with a growing number of customers, his distinctive vacuum cleaners inevitably attracted the attention of his competitors. Today the IP community knows Dyson as someone who is not afraid to litigate to protect his patent, trade mark and design rights, and to push constantly for inventor-friendly improvements to the IP system.

After being involved in a landmark trade mark infringement case against Electrolux in the UK, Dyson was a party to the first spare parts design case in the UK in December 2004. Qualtex, Europe's largest maker of spare parts for domestic appliances, was held to have infringed 14 unregistered Dyson designs. Two years ago, Dyson pocketed \$6.24 million in a settlement with rival Hoover after the High Court found that Hoover's triple-vortex vacuum cleaner had infringed Dyson's patented dual-cyclone machine. Today Dyson's dual cyclone vacuum cleaner is one his most successful products but his achievement came only after the inventor had faced legal costs and patent fees that almost bankrupted him. Dyson went twice to the European Court of Human Rights to appeal against the mandatory high patent renewal fees he had to pay as a designer and inventor. Both of his appeals were thrown out on the grounds that the patent renewal fees were reasonable.



FLORIAN MÜLLER

Open source campaigner

Europe's software patent debate is one of the fiercest and most controversial the European Commission has ever seen. Rarely do European laws attract so much political lobbying from such a diverse range of interest groups, both inside and outside the EU. The software patent proposal triggered clashes between governments, industry associations, multinational corporations, small companies, innovators, small-scale developers and green and left-wing politicians. But ever since the EU introduced its plans for the computer-implemented inventions directive in February 2002, no other group has fought as hard against the law as the open source movement. In October 2004 software industry guru Florian Müller launched a website called NoSoftwarePatents.com in 12 languages, in cooperation with 1&1, Red Hat and MySQL AB. It quickly became the primary, although unofficial, information source for the media, industry and lobby groups to turn to for the latest gossip about developments on the EU's hottest IP topic.

In March 2005 Müller and well-known campaign group Foundation for a Free Information Infrastructure (FFII) merged their websites to give Müller more time to develop his own software project. But Müller's legacy continues. The FFII still use his site as a platform for updating visitors about the latest software patent news, gossip, surprises and outcries. When, in July, the European Parliament finally rejected the directive, Müller could claim at least some of the credit.



KATSUMI SHINOHARA

IP High Court

Long-time IP judge Katsumi Shinohara is the first chief judge of Japan's new IP High Court. Launched in April, the specialized court replaced the IP division of the Tokyo High Court. It is, in part, a response to a series of IP cases that caught corporate Japan off-guard, culminating in the Tokyo District Court's 2004 decision to award inventor Shuji Nakamura \$180 million for transferring patent rights over his blue LED to his employer Nichia Corporation. The new court system should help make IP decisions more consistent. A grand panel, consisting of four judges from each of the court's four divisions, plus chief judge Shinohara, will hear important legal cases where it is necessary to hand down the court's unified opinion as soon as possible.

The Court is also the result of some high level lobbying by Japanese politicians who want the country's IP litigation system to emulate that in the US, which is widely seen in Japan as a more IP-savvy nation. Under Shinohara's leadership, the court will need to impress critics who saw it as an eye-catching but cosmetic effort to overhaul Japan's system of IP trials.

ORRIN HATCH



Senate IP Subcommittee

Despite stepping down as chair of the Senate Judiciary Committee earlier this year, Hatch still wields great influence over the chamber's IP policy. At Hatch's request, new Judiciary chair Arlen Specter created a dedicated IP subcommittee, led by Hatch and ranking Democrat Patrick Leahy. The subcommittee has not yet found its feet, with just a couple of hearings held so far this year, but its creation, and Hatch's chairmanship, are a signal of intent: expect Hatch and the subcommittee to have a big say over the direction of patent reform and prospective changes to digital copyright laws.



MICHAEL LEATHES

Batmark

Those lucky enough to attend BATMARK's presentation during the INTA Annual Meeting in San Diego earlier this year were treated to an entertaining afternoon as Michael Leathes and his colleagues provided an interactive session including electronic voting, flying tennis balls and even a trade mark-related song. But behind the showmanship Leathes has serious aims - and when he focuses on something he gets it done. Take mediation: Leathes has streamlined BAT's dispute resolution procedures since joining the company by implementing an ADR policy that it uses whenever possible. More recently, working with Ford Motors, he launched an electronic IP management project that is now an independent company, ANAQUA, used by IP owners and their advisers worldwide. His latest initiative concerns the regulatory threat to brands - something tobacco companies have plenty of experience of, and which he believes those in the food and drink, cosmetics and pharmaceutical industries need to be much more aware of.



JIANG ZHIPEI

Supreme People's Court

As Chief Justice of the Intellectual Property Rights Tribunal of the Supreme People's Court, Judge Jiang Zhipei has overseen the drafting of a series of judicial rulings issued by the top court on the way lower courts should interpret China's civil IP laws and handle cases. After China's IP legal regime was overhauled in preparation for WTO membership, Judge Jiang provided guidance on a range of IP issues from patent, trade mark and copyright to the way disputes over domain names should be dealt with. More recently, he played a role in drafting the important and long-awaited judicial guidelines on the thresholds for bringing criminal actions in IP infringement cases. The guidelines, which vice-premier Wu Yi promised US officials would be in place by the end of 2004, duly came into force on December 22. In addition to his judicial role, Judge Jiang is an exponent of the value of IP rights and their protection. He has his own legal website where he posts copies of important judicial decisions in English and Chinese and responds to readers' IP law queries. He is a prolific conference speaker and author.



JOHN CALL

8 New Square

You may not have heard of John Call. But you will almost certainly have heard of Lord Justice Jacob, Mr Justice Laddie, Judge Michael Fysh, Mark Platt-Mills QC, Peter Prescott QC, Mary Vitoria QC and David Kitchin QC. All are members or former members of 8 New Square, London's leading chamber of specialist IP barristers and possibly the largest single group of IP advocates in Europe. Members of the chambers have acted in many of the major IP cases in recent years, including *Dyson v Hoover*, *Biogen v Medeva*, *Celltech v Medimmune*, *CAT v Abbott*, *Budweiser v Anheuser-Busch*, *Amgen v TKT* and *BHB v William Hill*. As senior clerk for more than 25 years, Call is at the heart of this IP litigation machine, assigning cases, liaising with clients, negotiating prices and even updating the chambers' website. Like Lord Justice Jacob, he is also an Arsenal season ticket holder. As one partner in a leading London firm says: "Don't underestimate his role!"

PAUL MAIER

OHIM

As the head of OHIM's designs department, Paul Maier has played a crucial role in the development of the Community design system since it was launched in April



2003. He was instrumental in ironing out technical glitches and launching an online filing facility for Community design applicants on June 30 2003.

But it is less well known that Maier was a key figure in OHIM's efforts to minimize disruption for IP owners and applicants when an additional 10 countries joined the EU in May 2004. More than 300,000 trade marks were extended at midnight on May 1 and became automatically enforceable before the Community trade mark courts of the new member states. Maier had been preparing for EU enlargement since 2000, looking at how to tackle registration fees, translation issues and bad faith registrations in the new member states. He also worked closely with national IP offices on issues such as making national databases available and comprehensible to all EU applicants.

Maier joined OHIM in May 1995 as chief adviser to the president, having previously worked as a legal adviser for trade organizations and the European Commission on IP-related issues, in particular the harmonization of copyright laws and international agreements such as TRIPs. He has been head of the designs departments and a member of OHIM's management committee since 2002.



TOVE GRAULUND MARQUES

Re-elected as MARQUES chairman in February this year, Tove Graulund also has a full-time position as head of IP at Arla Foods in Denmark and is a prolific speaker and commentator. Under her chairmanship, MARQUES has become an increasingly important voice on branding issues in Europe and beyond - ranging from OHIM fees and examination standards to the .eu domain, the Madrid Protocol and geographical indications - as well as an organiser of popular conferences.



HERB WAMSLEY IPO

Officials at the Intellectual Property Owners Association (IPO) have had a busy year speaking out for the organization's corporate members. In particular, led by Wamsley, the IPO made a big - though ultimately unsuccessful attempt - to end USPTO fee diversion in the latest Congressional budget by encouraging members to lobby their local congressmen. However, the organization has continued to keep the issue prominent in the minds of some of the largest US companies. This year, the IPO ventured into new territory, organizing and hosting a conference about patent trolls, which drew a who's who list of speakers and brought mainstream media attention to the issue - a rare occurrence indeed.



WUBBO DE BOER OHIM

De Boer was reappointed for a second five-year term as President of OHIM last year. Since starting the job in 2001, he has overhauled the internal organization of the office, reduced processing delays and promoted electronic business in every aspect of the Office's work. He has also seen OHIM's workload increase with the accession of 10 new EU member states and the launch of the Community design. De Boer, a law graduate who formerly worked in the Dutch civil service, believes that OHIM should not charge more than necessary and has been a firm supporter of the Commission's controversial plans to reduce application and renewal fees. With his scholarly lieutenant Alexander von Mühlendahl due to retire in October, de Boer is already gaining a higher profile. He is an increasingly familiar figure on the conference circuit where he is often outspoken in promoting reform and criticizing those who stand in its way. His next big challenge will be to reassure users that quality will not suffer as filings increase.



LORD HOFFMANN House of Lords

The bicycling 71-year old judge is one of the more colourful figures in the UK judiciary. Brought up in Cape Town, he studied at Oxford before a distinguished career as a barrister and then a High Court judge. Lord Leonard Hoffmann is best known to the public for his involvement in human rights cases - the Lords had to set aside their

decision and rehear a case over Chile's General Pinochet when it emerged that he was a director of Amnesty International - and earlier this year he slammed a UK law allowing detention without trial: "The real threat to the life of the nation, in the sense of a people living in accordance with its traditional laws and political values, comes not from terrorism but from laws such as these."

But it is as the only IP specialist among the 12 Law Lords that Baron Hoffmann of Chedworth in the County of Gloucestershire - "Lennie" to friends and colleagues - has earned his reputation among lawyers and his fellow judges. Following a lean spell for IP cases in the UK's highest court, last October Hoffmann wrote two important patent judgments in the space of a few weeks. In both *Sabaf v MFI* and *Amgen v TKT*, Hoffmann invalidated controversial patents while discussing some of the key issues of UK and European patent law. His opinion in the *Amgen* case was widely seen as a model of clarity and thoroughness that demonstrated deep consideration of the technical and theoretical issues in both the UK and overseas.

The *Amgen* ruling affirmed the relatively narrow scope of protection available for patents in the UK, by refining the three so-called *Improver* or Protocol questions (questions that were identified by Hoffman himself in an earlier case). Rejecting a US-style doctrine of equivalents, he wrote: "American patent litigants pay dearly for results which are no more just or predictable than could be achieved by simply reading the claims."

In another case last year, Hoffmann was in the minority when the Law Lords voted 3-2 in favour of model Naomi Campbell after she claimed that photographs published in the *Daily Mirror*, a British tabloid, of her leaving a drugs clinic were an invasion of her privacy. Disagreeing with the majority, Hoffmann wrote: "The decision to publish the picture was in my opinion within the margin of editorial judgment and something for which appropriate latitude should be allowed."

Independent, intelligent, incisive and at times witty and provocative, Hoffmann is likely to continue to play a key role in the evolution of UK and European IP law for at least the next four years, after which he is due to retire.



ERNESTO RUBIO

WIPO

"Great system - but what about Latin America?" is a typical trade mark owner's view of the Madrid Protocol. The global trade mark protection system now has more than 60 member states, spanning most of the world's key markets and including the US and the EU. But the only Latin American member state is Cuba - and none of the rest have shown much interest in joining. WIPO has recognized the geographical deficiency and is pushing hard to change the situation. Spanish has been added as a working language and a team of Latin American specialists is promoting the system throughout the continent. At the head of this team is WIPO assistant director-general Ernesto Rubio, a Uruguayan. Rubio has responsibility for trade marks, industrial designs and geographical indications, which includes both the Madrid and Hague systems. Working closely with trade mark owners' organizations, WIPO is promoting the benefits of Madrid, but has so far failed to make an impact in Latin America. Will that change in the next few years? It may be down to Rubio to make the difference.



KYLE SAMPSON

Department of Justice

As head of the special unit for IP matters at the US Department of Justice, Kyle Sampson is probably the most powerful IP law enforcer in the US. Sampson was appointed to the job in March 2005, replacing David Israelite as chairman of the department's IP Task Force, which was created in 2004 to help the department fight IP crime. Last October the task force issued a report calling for more FBI agents to investigate IP crimes, more federal resources and tougher enforcement methods to tackle infringers. It also recommended the creation of five new computer hacking and IP units across the US. Sampson previously worked as counsellor to Attorney General John Ashcroft and served in the White House as associate counsel to the President.

JAMES SENSENBRENNER

House Judiciary Committee

While Lamar Smith, the chair of the House IP subcommittee, runs the day-to-day business of IP legislation, Sensenbrenner's eagle-eyed management of his



subcommittees ensures his place on the list. But Sensenbrenner's influence in the IP world stems from more than just the power he wields over his subcommittees. In the past year, he has become ever more vocal in his criticism of standards of IP protection around the world. At a press conference earlier this year, Sensenbrenner berated US companies for their lack of effort in pushing to protect their rights. The politician claimed that of all the companies that have suffered infringement in China, only one - Starbucks - has filed a complaint at the WTO.



ZHENG CHENGSU

Chinese Academy of Social Sciences

China's most prolific IP law academic, Zheng Chengsi is a senior research fellow at the country's leading legislative think tank - the Chinese Academy of Social Sciences (CASS), part time professor at Beijing University, an arbitrator at WIPO's arbitration centre and a member of the law committee of the National People's Congress.

He played a key role in drafting and amending China's Copyright Law, Trade Secret Law and Trade Mark Law, led work writing the IP chapter of China's Civil Code and last year advised the team of judges and prosecutors who drafted long-awaited judicial guidelines on the thresholds for bringing criminal actions in IP infringement cases.

Zheng himself hit the headlines earlier this year when he brought a lawsuit against a Beijing-based company for selling unauthorized digital versions of his books on its website. As if proof were needed of the gall of Chinese copiers, of the eight books on offer, seven dealt with piracy and copyright law issues and one was entitled *Knowing the Enemy and Yourself; Winning the Intellectual Property War*. But this was one IP war that Zheng won: earlier this year a Beijing court ordered the defendant to hand over Rmb56,500 (\$6,800) and apologize to the professor.



STEPHEN KOPLAN

International Trade Commission

In 2004 President Bush gave Stephen Koplan the task of chairing the US International Trade Commission, a federal agency that has become an increasingly powerful tool in the US corporate world's IP armoury. In addition to providing trade expertise to the government and supporting policy makers through economic analysis and research, the administrative body also carries out so-called Section 337 investigations into IP infringement on the grounds that flouting IP rights constitutes an unfair trade practice. It can issue powerful orders against importers, handing down blanket bans on the sale of their products into the US. Koplan has held the chairmanship from 2000 to 2002, and he has served as an ITC commissioner since 1998.



RICHARD HEATH

Unilever

An anti-counterfeiting resolution agreed by INTA's Board of Directors in March this year was an acknowledgement that brand owners need to take a more visible role in the war on fakes. It was also a personal victory for Richard Heath, the Unilever trade mark counsel who has campaigned doggedly to get the issue addressed at the highest levels. When Heath became chair of the Association's anti-counterfeiting and enforcement committee early in 2004, he immediately launched a review of INTA policy in the area and set up five regional sub-committees to examine what needed to be done. The Board's seven-point resolution emerged directly from this process.

Alongside his involvement with INTA (he is Board secretary as well as serving on three committees), Heath works with a number of other organisations, including the Pharmaceutical Trade Marks Group and the Global Business Leaders Alliance Against Counterfeiting - a top-level business organization that he was instrumental in founding in 2004. The Alliance helps governments and multinational organizations to raise global political awareness of the social and economic damage caused by counterfeiting.

Heath is head of trade marks and general trade mark counsel for the Anglo-Dutch consumer goods and pharmaceutical company Unilever, a multinational business that has 30 key global brands. The company recently completed a fundamental review and simplification of its brand portfolio, which spans the food and drink, home care and personal care industries, and includes Flora, Slim-Fast,

Birds Eye, Cif, Dove, Knorr, Domestos and Lipton. Heath has worked in Unilever's trade marks department since 1992, after stints in the UK and Switzerland with Smith & Nephew and Roche.

With his high profile in INTA, PTMG and now GBLAAC, Heath is one of industry's most powerful and authoritative campaigners against counterfeiting, and deserves much of the credit if any progress comes.



URSULA KINKELDEY

EPO

Since taking over as chairwoman of the technical boards of appeal (biotechnology) at the European Patent office in 1994, Ursula Kinkeldey has overseen more than 100 decisions in one of the most rapidly developing areas of science. She has been in charge of landmark cases such as Harvard Oncomouse (patenting of animals), Kirin Amgen (a protein patent), PGS and Novartis (patent requirements for plants), Hoffmann-La Roche (a DNA-related patent relating to the basis for genetic tests), and the Chiron cases, one of which related to a patent for a diagnostic kit for hepatitis C and one to a patent for the HIV genome. A former patent attorney, Kinkeldey joined the technical boards of appeal at the EPO in 1988. In 2004 she became a permanent member of the EPO's enlarged board of appeal. She is a frequent speaker on biotechnology-related cases heard by the EPO's boards of appeal and a lecturer at the Eidgenössische Technische Hochschule Zürich on IP and genetic engineering.



MITCH BAINWOL

Recording Industry Association of America

Mitch Bainwol has been chairman and chief executive officer of the Recording Industry Association of America (RIAA) since September 2003, during which time he has turned up the heat on individuals across the US downloading music files illegally. In a controversial move, the RIAA has extended its anti-piracy campaign by filing thousands of lawsuits against downloaders.

But the success of the policy in the US buoyed the music industry, and in early 2004 record company executives began a similar campaign across Europe. More recently, Bainwol celebrated the victory of record companies in *Grokster*, a lawsuit that the RIAA had taken a keen interest in from the beginning. On June 27 the US Supreme Court ruled that peer-to-peer file-sharing networks, which encourage their users to share copyrighted music illegally, can be held liable for contributory infringement. The decision finally gives record and music industries a judgment they can use to try and shut down services such as Grokster and StreamCast's Morpheus in the future.



JUSTICE WILLIAM GUMMOW

Australian High Court

Australia is slowly edging its way to the forefront of IP policy and practice. The Free Trade Agreement the government negotiated with the US reshaped the country's IP legal landscape and provoked fervent debate in editorial columns across the country about generic drugs, Disney copyright terms and the rights of internet service providers. While the FTA introduced Australian citizens to more obscure aspects of patent linkage regimes, Australian courts have also been grappling with some key IP litigation in recent years that will have a profound impact on the way that IP influences consumers' everyday lives.

And grappling most energetically has been High Court judge Justice William Gummow, who has been "instrumental in reversing Federal Court decisions which would have severely damaged Australia's reputation in IP matters," according to one IP lawyer. Gummow was made a Federal Court judge in 1986 and promoted to the High Court in April 1995, making a name for himself in IP disputes along the way. He has ruled on many of the more Byzantine aspects of patent law, from the requirement that claims are fairly based on the description in *Lockwood Security Products Pty Ltd v Doric Products Pty Ltd* to patentable subject matter in *Advanced Building Systems Pty Ltd v Ramset Fasteners Aust Pty Ltd*. But later this year Justice Gummow and five colleagues will hand down a decision in a case far more likely to grab the headlines - *Sony v Eddy Stevens*, on the issue of mod chips allowing copied games to be played on Playstations.

The case turns on whether Sony's devices are technological protection measures as defined in the Copyright Act or merely designed to act as regional access codes. In 2002, a Federal Court judge ruled against Sony, but the ruling provoked criticism from IP practitioners and, less than a year

later, the full Federal Court upheld Sony's appeal. But Eddy Stevens then appealed to the High Court, arguing that since it is legitimate to use a mod chip to make back-ups and play games and DVDs bought outside Australia, then it is legitimate to sell them. Justice Gummow and his High Court colleagues are due to give their decision within the next three months, and the entertainment industry nervously awaits.



ANNE GUNDELFINGER

Intel

Since taking over as INTA president in January, Anne Gundelfinger, Intel's associate general counsel, has set up three presidential task forces, including one on confronting growing anti-IP sentiments in society. Her key priorities this year will be to achieve progress on worldwide anti-counterfeiting campaigns and push for a revision of the US Federal Trademark Dilution Act. Gundelfinger is an INTA veteran who has worked on various committees and served as vice-president. Her inside knowledge of the Association and the respect she has earned both for her roles in INTA and at Intel could make her one of the trade mark organization's most influential presidents.

Gundelfinger joined Intel in 1997 and can claim much of the credit for orchestrating brand protection in the company. Intel's comprehensive branding strategy has made it the world's fifth most valuable brand, worth \$35 billion in 2004, according to Interbrand - not bad for a product that many consumers would have difficulty recognizing.



PASCAL LAMY

WTO director general-elect

After a five year stint as EU trade commissioner, September sees Pascal Lamy take his negotiating skills to a bigger realm, when he becomes director-general of the WTO.

Lamy is probably better prepared than anyone else to tackle the difficult Doha negotiations looming in December. During his years in Brussels, he was the man in charge of representing the EU's position on international and IP-related trade issues, from the TRIPs agreement and geographical indications to discussions about access to cheaper medicine for the world's poorest people. Lamy's role at the WTO will be to revive the moribund talks and guide member states towards some form of agreement at the WTO ministerial meeting in Hong Kong in December. It will not be an easy task. Discussions at the last ministerial meeting in Cancún at the end of 2003 collapsed, and developing countries have shown an increasing willingness to withhold IP-related concessions until they receive better trade deals in agriculture. As small and medium-sized economies start to flex their muscles in the WTO, and the US effectively threatens to by-pass it with a growing number of bilateral free trade deals, Lamy has a difficult task ahead of him.



JIM STALLINGS

IBM

Stallings took the position of vice-president of IP and standards at IBM at the end of 2004, joining from the company's Linux division. In his new post, Stallings has overseen a radical shift in IBM's patent policy, one which the company believes will redefine how industry uses its IP in the future.

The new policy was unveiled with great fanfare in January when the company released 500 of its patents for open source use. But that 500 is just the beginning: according to Stallings, IBM plans to release many of its baseline technology patents while developing more technology, and thus securing more patents, at the cutting edge. This strategy envisages greater cooperation between industry rivals - effectively, patent pooling - with the aim of increasing innovation in technologies that build on a shared base.

It remains to be seen how widely IBM's new policy will be employed by other companies. Critics point out that IBM has long ceased to derive much revenue from its baseline technology patents and so the move to providing additional technology and services further up the technology stack is not as dramatic as it may seem at first.

But the technology industry is becoming an increasingly interdependent sector, relying on a growing number of cross-licensing and standard-setting deals, and Stallings and IBM are offering a compelling view of how this trend may develop. Regardless of the outcome, the importance of this

new direction by the owner of one of the world's largest patent portfolios should not be overlooked.



RA MASHELKAR

CISR

Ragunath Anand Mashelkar, an eminent scientist and director general of the Council for Scientific and Industrial Research, is India's foremost IP specialist whose influence spans the local, the national and the international. As chair of the National Innovation Foundation, a government sponsored body that provides support to grassroots green innovators, he works alongside people such as Honey Bee Network founder Anil Gupta to promote IP rights to the poor. Earlier this year he was asked to head a committee to examine whether the government could make further changes to India's Patent Act amendments while still remaining TRIPs-compliant. Internationally, Mashelkar represents India's interests in debates on patent harmonization: a role that requires deft negotiating skills as the country tries to position itself both as an emerging IP-rich economy and as a champion of developing countries that have traditionally been sceptical of the value of IP rights. Over the next year, Mashelkar will help finalize a report on the link between IP rights, innovation and public health that the WHO commissioned in 2004.



ADAM JAFFE, PROFESSOR, BRANDEIS UNIVERSITY AND JOSH LERNER, PROFESSOR, HARVARD BUSINESS SCHOOL



Patent professionals rarely enthuse about economists who criticize patents. Because of the state-granted monopoly position that patents enjoy, economists often see them as inefficient and inconvenient, and are forever advocating drastic changes to the IP system. That the work of professors Jaffe and Lerner has been widely read and debated by the IP community is testament to the rigour of their argument, and the influence they have had in IP over the past year.

The publication of Jaffe and Lerner's book, *Innovation and its Discontents*, coincided with a wider movement towards patent reform in the US, exemplified by reports on the state of the US patent regime published recently by the Federal Trade Commission and the National Academies, and the moves towards a patent reform bill in the House of Representatives. However, simply catching the zeitgeist does not explain why the two economists attracted the attention of the patent world and feature on this list. What separate Jaffe and Lerner from other patent system critics are their proposals for fixing the problems they identify. Their solutions, which include pre-grant patent oppositions that allow companies to produce prior art that will lead to rejections of bogus applications, are ideas that are now regularly discussed by professionals, regulators and lawmakers alike.



LI QUNYING

China Customs

Li Qunying is one of a new breed of young, dynamic Chinese IP technocrats whose work makes a very practical difference to IP owners. At just 45, Li is in charge of the IP division of China Customs' policy and public affairs department, a group at both the metaphorical and genuine frontline of the battle against the export of fakes being churned out by an ever-growing number of Chinese factories. New regulations introduced last year strengthened Customs' hand against counterfeiters, and although some foreign IP owners grumbled that they still left loopholes for clever exporters to exploit, the measures were partly responsible for a 30% upsurge in the number of seizures of infringing goods at China's borders last year. Li Qunying was heavily involved in consulting with industry associations and the legal profession over the new regulations, as well as overseeing their implementation. An increasingly familiar figure on the international Customs circuit, Li played a key role in sponsoring the World Customs Organization regional seminar on IP rights in Shanghai last year, and he is developing closer links with counterparts in the EU, UK, US and Hong Kong to boost Customs cooperation.

MIKE KIRK

AIPLA



One of the best-known figures in IP, Kirk has this year continued his crusade to get value for money for users of the USPTO, in particular campaigning for an end to fee diversion, which he believes turns the Patent Office into a revenue raising cash cow. Kirk has also been a key figure in the patent reform debate, with the AIPLA co-hosting, alongside the Federal Trade Commission and the National Academies' Board on Science, Technology and Economic Policy, a series of town hall meetings focused on the topic. The meetings brought together various IP stakeholders - including individual inventors and large companies - to discuss the various reform proposals.



BO VESTERDORF

Court of First Instance

As President of the Court of First Instance in Luxembourg, Vesterdorf is in charge of the court that deals with all appeals on Community trade marks and designs coming out of Alicante as well as the European Commission's dispute with Microsoft. The court has 25 members - one from each EU member state - who normally sit in panels of three. Vesterdorf, the Danish representative, was elected president in 1998 and will hold the position until at least 2007. The quality of the court's judgments has never been in question, but with the number of trade mark applications increasing and no slowdown in parties' willingness to litigate, the backlog is mounting: 110 IP disputes reached the court during 2004 and cases typically take two years to deal with. Vesterdorf is on record as favouring the introduction of junior panels to hear OHIM disputes, with only the biggest cases going to the CFI itself. But so far there has been little progress on changing the structure - which would require approval from all EU member states. Most practitioners agree that the present system is far from ideal, but change in the EU is rarely quick or simple. If Vesterdorf can find a way to reduce backlogs while improving efficiency, he will earn the thanks of trade mark owners worldwide.



TODD DICKINSON

GE

On May 1 2004 former USPTO commissioner Todd Dickinson left private practice at Howrey to take on the role of GE's chief IP counsel and corporate vice-president. Dickinson's job includes supervising GE's IP portfolio (which includes over 20,000 trade marks), overseeing the company's patent applications (which last year averaged more than 3.8 each day), and managing the company's 80 IP-related staff. His double role as IP counsel and corporate vice-president has given him the authority necessary to push through a large-scale review of GE's IP work, a programme he announced last November and as the public face of one of the world's largest IP owners, Dickinson holds one of the most influential positions in IP.

One of his goals in the coming year is to encourage GE officials to lobby foreign governments harder over the way they develop IP regulations, as well as boosting the profile of IP within the company. Speaking to *MIP* last year he said: "We need to have the financial and business people more engaged in IP, not just aware of it."



ELLEN T'HOEN

"We have only just scratched the surface," says Ellen t'Hoen of Médecins sans Frontières' international campaign to ensure that IP rights do not restrict the availability and affordability of drugs in developing countries. While MSF's Access to Essential Medicines crusade hit its high point in 2001, when WTO members in Doha agreed to allow limited compulsory licensing, the campaign is far from over.

With the sixth WTO ministerial conference being held in Hong Kong at the end of the year, t'Hoen says MSF, along with international NGOs such as Oxfam and national health advocacy groups, want far more to be done to put the relationship between IP rights and health back at the top of the international agenda. MSF is planning a series of seminars with governments in the run up to the meeting to ensure its point of view is heard.

One of the biggest drivers for the organization's renewed campaigning energy was India's decision to reintroduce product patents for pharmaceuticals from the beginning of 2005, a move that t'Hoen claims could force up prices of drugs for the rest of the world by cutting off supplies of generics at source. In addition to highlighting the potential problems for poor communities, MSF's campaign will also focus on getting more research and development funding channelled into finding treatments for developing country diseases, by sustained lobbying at the WHO, the European Parliament and individual governments to try and change the way that governments think about the

way health care research should be managed. "TRIPs showed that increasing IP protection does nothing for R&D for neglected diseases. We need a different approach. We want to see TRIPs minus and R&D plus." Finally, t'Hoen and her team will work with local health activist groups in countries negotiating free trade agreements, particularly with the US, to help them influence the debate on IP. "We made enormous achievements at the WTO but the ink was barely dry [at Doha] and the US started to undo it country by country with FTA negotiations that are neither open nor accessible".



JUSTICE PRADEEP NANDRAJOG

Delhi High Court

Forty-seven year-old Pradeep Nandrajog was made a permanent judge of the Delhi High Court in April 2004, two years after joining the bench as an additional judge.

The energetic former litigator has made a big impact in a short space of time, showing a willingness to dispose of a large number of IP cases quickly and efficiently and spearheading the Court's move towards awarding far higher levels of damages than IP-owning plaintiffs had previously managed to obtain. Nandrajog and his colleagues Justices R C Chopra, M K Sharma and Vikramjit Sen have handed down an important series of surprisingly IP-friendly judgments over the past 18 months: Chopra awarded the first punitive damages in an IP case to *Time* magazine, Sharma accepted the concept of trans-border reputation in the *HBO* case and Sen recognized the reputation of the Rainforest Café's service mark, even though the company had no business in India.

But it is Nandrajog that makes it onto *MIP*'s list. He has awarded Microsoft almost Rs50 lakhs (\$100,000) in two infringement cases, the largest amounts awarded in a software piracy case in India; he ordered a recruitment agency that had sent emails purportedly from India's national software association NASSCOM to pay Rs16 lakhs (\$35,500) in damages in the first phishing case that the country's courts have dealt with; and he pushed the boundaries of the law on moral rights when he ordered India's government to return a work of art to sculptor Amarnath Sehgal that had languished for years in a warehouse. As one lawyer told *MIP*: "He's the one to watch on IP law developments".



ANDREW CHRISTIE

IP Research Institute of Australia

Last year saw IP issues shoot up the Australian political agenda following negotiations with the US over a free trade agreement. As politicians traded insults over the IP impact of the FTA, and the terms patent linkage, pharmaceutical evergreening and ISP liability entered into mainstream political discourse, Professor Andrew Christie appeared regularly on TV shows and in print to add a voice of academic reason to heated discussions. Christie is at the cutting edge of Australian IP law studies, launching, and then leading, the cross-faculty Intellectual Property Research Institute of Australia, based in Melbourne. Over the past year he has weighed in on Australian debates about experiments on patented inventions (in favour) and opposition party proposals to outlaw so-called "dodgy" patents aimed at extending monopoly rights over drugs (sceptical). Christie is a member of the Australian Law Reform Commission's Advisory Committee on Genetics, Intellectual Property and Human Health, and a member of the influential Advisory Council on Intellectual Property, an IP think tank set up to advise the government.



ALAIN POMPIDOU

EPO

A year into his three-year presidency of the EPO, Alain Pompidou still divides opinion. As a patent outsider - and the first EPO president not to be a lawyer - some believe he brings a breath of fresh air to the overburdened office, while others remain sceptical that he will achieve much in the limited time he has before the UK's Alison Brimelow takes over in 2007. For his part, Pompidou made it clear during a series of interviews and speeches last autumn that he will prioritize internal reform, push for implementation of the London Agreement on translations and support a diplomatic conference on the European Patent Litigation Agreement. These measures are essential to keep the European system accessible and effective for patentees, and if Pompidou can deliver on his promises his tenure will surely be viewed as a success.

ULF PETRUSSON



Gothenburg Center for Intellectual Property Studies

The respect in which Gothenburg's Center for Intellectual Property Studies (CIP) is held is demonstrated by the calibre of speakers at its annual forum - which this year included representatives of Thomson, Volvo, Thales, Lucent, Rambus, Hewlett-Packard, Cisco, Nestlé and Microsoft among many others. The CIP is a joint venture between Chalmers University of Technology and Göteborg University. What makes the venture unique is that it is interdisciplinary, and covers IP issues in management, economics, law and technology under one roof. Typical programmes include intellectual capital management, IP management and entrepreneurship, and IP infrastructure and biotech business creation. The Center also promotes effective IP management in companies and universities. At the forefront of this effort is Ulf Petrusson, associate professor in legal science at Göteborg University, director of the CIP and, most recently, author of *Intellectual Property & Entrepreneurship: Creating Wealth in an Intellectual Value Chain*. Petrusson has spent 17 years lecturing and teaching at the university, with a short break in the early 1990s when he was a company lawyer, and has headed the CIP since it was founded in 2000.



MARSHALL PHELPS

Microsoft

Since joining Microsoft as its new IP chief in 2003, Marshall Phelps has been rolling out an IP licensing programme of the kind which today helps his former employer, IBM, reap around \$2 billion a year.

Phelps brought to Microsoft the commercial acumen he had honed during his 28 years at IBM: One of his first jobs was to help reach out-of-court settlements in long-running disputes - including a settlement of more than \$2 billion with InterTrust and Sun Microsystems. He then set about developing an extensive cross-licensing programme with the company's rivals.

Now, after two years at Microsoft, Phelps has underscored his influence by taking a key role in the establishment of a corporate IP ventures programme. The programme looks to earn revenue from licensing Microsoft's unused innovations to venture capitalists and small businesses, allowing them to develop new products based on Microsoft's technology.



CHARLIE MCCREEVY

EU Commissioner

"To best serve our economic objectives, intellectual property protections need to be framed not only with rights holders in mind, but also consumers and competitors," Charlie McCreevy told the European Parliament in late 2004, just before starting

his five-year term as the new EU internal market commissioner.

The former Irish finance minister walked straight into one of the EU's most controversial IP issues: the software patent directive. With member states at loggerheads over the scope of the law, discussions had been stalled in the Council of Ministers for months. McCreevy played an instrumental intermediary role, attempting to reconcile the widely divergent positions held by the Council and the Parliament. After months of fruitless discussion, the law finally progressed through the Council in March. Following a recent vote by the Parliament, a new law could now be closer than ever.

McCreevy's second key priority is to revive the debate over the badly battered and almost-forgotten Community patent proposal. The idea of an EU-wide patent right has been touted for over 30 years, but after formal discussions finally began in 1999, member states' diverse expectations and political power games brought the EU's long-planned project to a rather pitiful end in May 2004. Failure to adopt a system for a single EU patent, said McCreevy, would mean higher costs and legal uncertainty for IP owners and less research and innovation in the internal market.

The IP community will hear a lot more from the EU Commissioner in the coming year. As he says about himself: "Those of you who know me will know that I defend my point of view vigorously. When it comes to matters of principle then I am persistent. I have always defended what I believed to be in the best interests of those I am asked to represent."

LAMAR SMITH



House IP subcommittee

Smith continues to impress the Washington DC insiders of the IP world with his dedication to the House of Representative's subcommittee on Courts, the Internet and Intellectual Property. The subcommittee has a full slate of IP work, most notably proposals for a patent omnibus bill. If the bill is passed, it will see the US adopt a first-to-file system, eliminate best mode practice and place a limit on damages awarded for wilful infringement. The bill will also require the USPTO to publish all patent applications. If passed, the law would dramatically alter the US patent regime - in large part thanks to the efforts of Smith and his staff.



IP KAT Website

IP Kat, the anthropomorphized creation of IP academic (and *MIP* founder) Jeremy Phillips and PhD student and author Ilanah Simon, is a website that has become increasingly influential in spreading information and campaigning on IP issues.

The authors, both members of the Queen Mary IP Institute in London, write about hot cases, newly launched books, events, curiosities and gossip in an authoritative but sceptical style that appeals equally to students, academics, IP practitioners and even judges and examiners. In less than two years, the IP Kat has become a popular read throughout Europe and beyond. The authors have even started a mini-campaign to have ECJ and OHIM opinions made available more easily, especially in English. Blogs such as the IP Kat (and there are several other good ones in the IP field) pose a serious challenge to those who would prefer to restrict legal information to individuals and companies who can afford to pay for it.

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