

A close-up photograph of a 3D printer nozzle printing a red and orange object. The nozzle is positioned at the top, and the object is being built layer by layer. The background is blurred, showing the printer's frame and other components.

# The GATHERER

Volume 5

## YOUR GUIDE TO MANAGING IP

**3D Printing**  
IP implications  
of a layered  
approach

Notifiable Data Breach  
Scheme – are you ready?

**PIONEER PODCAST**  
With Suzanne Nguyen  
Marketing Guru

*Who owns  
'RAW' files?*



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Leveraging Innovation



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# CEO MESSAGE

Welcome to our first edition of the Gatherer for 2018! I'm delighted to welcome you into the New Year by sharing our regular flagship publication with you. Developed by our thought leaders, especially for our clients, The Gatherer seeks to provide you with the most relevant insights and news into the ever-changing intellectual property landscape, both here in Australia and internationally. Within these pages, you will discover a vast selection of topical articles written by our technical experts, covering legislative updates, industry developments and the future of new technologies.

And speaking of new technologies, there's no doubt that 3D Printing is one of the technologies that will shape the culture of our society. It is changing, and will continue to change, not just the way we innovate but the very way in which we do business. What is less clear, however, is the disruptive impact this technology will have on intellectual property rights. One of the major questions facing industry today is whether the IP framework in Australia is adequate to protect the rights of those involved in 3D printing processes and distribution. Laura Tatchell and David King tackle this question and provide a detailed

analysis of how 3D printing may be expected to impact your intellectual property rights as this technology becomes part of the very fabric of our society.

Another interesting trend we've observed relates to ownership disputes in the design industry – not just in relation to the end-product but specifically in regard to materials created in the design process known as RAW or native files. Disputes can, and often do, arise between designers and clients about exactly what the client has 'paid for' – which can impact which IP rights the designer retains and those that the client obtains. Marie Wong and Adrian Huber provide an incredibly insightful look at this trend and what strategies may be implemented by both clients and designers alike in order to combat it. Following the Productivity Commission's range of recommendations relating to Australia's IP system late last year, the Australian Government recently provided its restrained and considered response. Peter Caporn elaborates on the response from the Government, sets out its recommendations and the potential impact of its recommendations.

Finally, Pioneer, our podcast series for serious innovators, continues to play a strong role in connecting industry with the minds of some of industry's finest. Throughout the series so far I've had the pleasure of interviewing a variety of innovators, entrepreneurs and industry experts – hearing their stories and lessons learned. In this edition of The Gatherer, we bring you a candid transcript of my interview with social media and marketing guru Suzanne 'String' Nguyen. I very much enjoyed the incredibly candid interview with String and encourage you to turn to [\[page 15\]](#) of this publication, or download the podcast from our website, for an enlightening and entertaining insight into innovative marketing in the digital age.

With so much happening in the intellectual property landscape, I hope that this magazine brings to light some of the exciting trends we're observing in industry today – or that you've discovered something new. I wish you, our valued clients and avid readers, every success in 2018.



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# WRAYS ARE ON THE MOVE

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# IN THE SPOTLIGHT WITH GUY PROVAN

**G**uy Provan is a lawyer with 30 years' experience in the field of intellectual property. After qualifying in Scotland, Guy worked in London before arriving in Australia in 1991 where he has practised intellectual property law in a variety of different organisations, including for a large national law firm, as a sole practitioner, and even embedded in a start-up company. Now at Wrays, Guy advises clients in relation to litigation, dispute resolution and the commercialisation of intellectual property.

**Q: What types of clients do you work with?**

A: I work with clients across a broad range of technologies, particularly in the engineering and resources industries. So we are talking crushers and sizers, drilling and oil rig equipment and manufacturing systems. Earlier this year I had a patent infringement action for a client involving a laser safety system used on press brakes. We also carried out due diligence on behalf of clients looking at replacing wear parts for their ore processing equipment. Interestingly, clients operating within the marine and defence industries seem to have recently

started focussing on the potential in developing their IP.

I also do quite a bit of work with clients in the software side of things, mostly licensing and commercialisation agreements. Over the years I have been involved with a number of software and internet companies taking their product to market. For example, I have worked closely with Kashif Saleem of Track'em who won the WA Innovator of the Year in 2015 for his asset tracking software which is used across a number of big projects across Australia.

**Q: You mentioned you work in the marine and defence space. What are some of the most unique innovations you see coming through in that industry at the moment?**

A: The marine and defence sectors are certainly areas for growth in intellectual property. The defence ship-building programs coming to WA will involve technology transfer from the European companies involved to local ship-builders and suppliers. And new IP will be created as a result of the programs. I think we will also see that expertise in the oil and gas, mining and resources sectors can be utilised in ship-building and related activities.

**Q: What are the most common sorts of dispute you see?**

A: Sadly, disputes over IP ownership are very common. It's disappointing when we see people falling out over who owns the IP, often to the detriment of their commercialisation activities. The best advice is to sort

out ownership at the beginning of a project so that everybody knows where they stand. And to make sure that everybody involved in the project has an agreement containing appropriate IP provisions.

Generally, whether acting for a plaintiff or defendant the priority is reaching a commercial settlement rather than starting a legal action. "Abandon hope all ye who enter here" should be written on the doors to the Court. There are times when starting or defending a legal action is necessary, but it should be an absolute last resort.

**Q: We know you also work with innovators from a range of industries, what are some of the key challenges they face?**

A: Coming up with a great idea or product is only the beginning – being able to execute it and make a viable business is the real challenge. It may sound obvious but there must be something that customers will pay for – and lots of customers, not just a few! Innovation requires all sorts of skills across technology, commerce and, above all else in my opinion, dealing with people. Funding is an issue of course but there is money available from local investors, supplemented by grants and the R&D tax incentive. In some situations, having IP is essential and investors like to see patents. Having an IP strategy is part of making the new business or innovative product defensible. I've been working in the field for quite a while now and there has never been a better time to be involved in innovation.



# 3D PRINTING

## IP IMPLICATIONS OF A LAYERED APPROACH

The game changing technology of 3D printing (a form of additive manufacturing – the creation of 3D objects by adding layer upon layer of materials) is becoming mainstream in our modern society. It has now entered our homes so that what was once a technology only available to large organisations and researchers is now available to hobbyists and smaller companies alike. You can easily pick up a 3D printer at your local Officeworks for under \$1,000.

You may be surprised to know that this form of manufacturing is not a recent innovation. The first 3D printing related patents were granted in the 1980s. As early as 1981, Hideo Kodama of the Nagoya Municipal Industrial Research Institute published his account of a functional rapid prototyping system using photopolymers. In 1986, Charles “Chuck” Hull patented the stereolithography apparatus and 3D printing became even more visible in the late 1980s.

But it wasn't until the mid-1990s that 3D printing gained traction – even as it was still working out the bugs. Eventually, improvements in technology, lower price points, and the introduction of consumer models led to the proliferation of 3D printers we see today.

The recent speed of this development (coinciding with the expiry of some of the core patents) has led to exciting applications of this technology across the fashion, medical, construction, aerospace, food, automotive and spare part industries.

To give a general idea about how it all works, a 3D Printer can convert an electronic 3D model file (usually originating from a computer-aided design, commonly referred to as a CAD) into a physical 3D object. The 3D printer follows the instructions in the 3D model file to ‘print’ the object using a variety of techniques in a variety of materials (eg resins, steel, polyamide, ceramics, titanium or silver). These techniques typically involve the printer head releasing tiny squirts of liquefied materials on top of one another, built up layer by layer until the final product is created.

Alternatively, you can create a 3D model file by scanning a physical object using a 3D scanner. These files can then be converted to formats which are readable and printable by 3D printers, to replicate the originally scanned object.

The advantages to be gained from 3D printing are numerous. Prototypes required during the design and innovation process can be more cheaply and efficiently manufactured. This encourages and fosters creative and new designs to be explored by companies globally. Companies can more readily individualise products to meet the market's increasing need for customisation and personalisation.

3D printing will dramatically affect the logistics industry by disrupting the supply chain and the need for warehousing and transport of a product which a customer can manufacture themselves. This creates efficiencies for businesses. For example, where once the harvesting of a crop might come to a grinding halt for a few weeks until a spare part for the harvester could be replaced (resulting in significant losses), today's wheat farmer can order the 3D model file for the

**“The advantages to be gained from 3D printing are numerous. Prototypes required during the design and innovation process can be more cheaply and efficiently manufactured. This encourages and fosters creative and new designs to be explored by companies globally. Companies can more readily individualise products to meet the market's increasing need for customisation and personalisation.”**

## *‘3D bioprinting’ is an astounding application of this technology in the medical space and is being used to grow biological materials such as bones, cartilage, tissues and potentially organs.*

spare part online from the harvester manufacturer for a fee and print the spare part at his farm using his own 3D printer on the very same day.

One of its current disadvantages is that 3D printing is typically a slow process, with particularly small objects taking six to eight hours to print and larger objects taking days, depending on the process used. However, as technology progresses, this problem is gradually decreasing with the advent of different methods to increase the speed of production.

‘3D bioprinting’ is an astounding application of this technology in the medical space and is being used to grow biological materials such as bones, cartilage, tissues and potentially organs. Simply put, 3D bioprinting is carried out by layering bio-ink (stem cells) onto a 3D scaffold to grow the intended biological material. The advantage of using a person’s stem cells is that it reduces the chance of a transplant rejection by the body, and allows replacement of degenerative tissue with new healthy tissue. This technology is predicted to be used to help treat neurological conditions such as Parkinson’s disease, epilepsy and schizophrenia. Soon we may be able to replace any part of the human anatomy which fails us – which means the prospects of extending the human lifespan are incredible!

3D Printing will however have a disruptive impact on intellectual property rights, including copyright, patents, designs and trade marks. One of the major queries facing the industry is whether the IP framework in Australia is adequate to protect the rights of those involved in 3D printing processes and distribution, and those whose products are 3D scanned or 3D printed.

### Copyright

Copyright protects the originality of a work and an author’s right to reproduce, publish or communicate it. 3D printing and scanning are likely to involve the creation and use of ‘artistic works’ (for example, architectural plans, engineering designs, sculptures, prototypes and 3D model files).

A 3D model file is likely to be protected under copyright law in a similar fashion to the way that copyright subsists in software, as long as there has been sufficient intellectual effort to create the file.

A copyright owner can therefore prevent a third party reproducing, publishing or communicating a ‘substantial part’ of a work through 3D printing or scanning. The copyright owner’s rights will also extend to the prevention of unauthorised communication of 3D model files (through uploading) to end users on file sharing platforms.

### Patents

Patent protection gives a patent owner rights to exploit the patented invention, or authorise another person to do so. Where the invention is a product, exploitation means:

- making, hiring, selling or otherwise disposing of the product
- offering to make, sell, hire or otherwise dispose of the product,
- using or importing the product, or
- keeping the product for the purposes mentioned above.

Where the invention is a method or process, exploitation means to use the method or process or to exploit the product resulting from such use.

Any unauthorised 3D printing (or ‘making’) of a patented product (for example, an inventive model drone) will constitute patent infringement by the person who carries out the printing of the drone, as will the subsequent sale of that drone to a third party. It is arguable whether the distribution of a 3D model file for the purposes of printing the drone is an authorisation to the end user to exploit the patent. Therefore the uploader of the 3D model file and the platform may be deemed liable for contributory infringement of the patent by the Courts.



which would otherwise exist in a design cannot be enforced where the copyright owner or its licensee has manufactured and sold products which embody that design.

### Trade Marks

Trade marks are signs used in business to indicate that the goods and/or services are provided by a particular trader. Trade marks can consist of words, images or both. A product that is printed in 3D bearing a trade mark owned by a third party may infringe that trade mark if it is registered in relation to the type of product printed. For example, if you decided to print a Qantas toy model airplane with the kangaroo device on the tail without authorisation, this conduct would infringe Qantas’ registered trade mark rights for the kangaroo device which specifically covers toy model planes.

### Home Users and Hobbyists

Our IP infringement laws are targeted towards parties in the manufacturing supply chain – those that ‘exploit’ products which may be protected by copyright, patent, design and/or trade marks. However, 3D printing negates the need for an external supply chain by bringing manufacturing activities into the home of the end user.

Accordingly, the end user who prints the patented or copyright protected object is likely to be an infringer, subject to any carve outs in IP legislation for non-commercial personal use.

However, when it comes to a patented process of creation, if a product is 3D printed, a person is likely to bypass the patented process and evade infringement.

Finally, if there is a patent over the process of using a product, the unauthorised supply of a 3D printed product to a third party with instructions on how to use it in the claimed manner is likely to infringe the patent.

### Designs

A registered design protects the appearance of a product by virtue of its visual features, including its shape, configuration, pattern and ornamentation. The owner is granted exclusive rights to make, offer to sell, sell, hire or commercially use a product embodying the design (or authorise a third party to do any of these things). If the product that is 3D printed is substantially similar to the registered design, the act of printing and any subsequent offer for sale, or the sale itself, will infringe the registered design.

For their protection, IP owners should ensure that any relevant designs are registered before a product is commercialised. Copyright

### What next?

The law is likely to shift in an analogous manner to the shifts we saw in response to the disruption of the television, film and music industries by illegal file sharing of copyright protected material on websites such as Pirate Bay. ISPs may be ordered by the courts to block websites facilitating or allowing unauthorised downloads of 3D model files for 3D printing.

We may also see online 3D printing platforms with subscription models similar to Spotify and Netflix, allowing downloads of licensed and authorised 3D model files, with royalties being distributed to rights holders.

The disruptive influence of 3D printing cannot be underestimated, especially given the speed of its development. It is essential that those involved with 3D printing are aware of their rights and those of others, and particularly the need for protection.



**LAURA TACHELL**  
Associate



**DAVID KING**  
Principal



# WHO OWNS 'RAW' FILES

## Copyright and graphic design

If you are lucky enough to work in the design industry, then your job involves the creation of intellectual property on a daily basis. And, on the opposite side of the table, if you've ever engaged a design or marketing professional, then you've likely had the pleasure of commissioning the creation of intellectual property.

A new logo design, a brochure, an annual report – each of these involve one or more kinds of intellectual property rights. The most common kind of intellectual property right in the context of graphic design is copyright. Copyright is important because it gives the owner the ability to control how the work is used. Disputes can often arise between designers and clients about exactly what the client 'paid for' and therefore what IP rights the designer retains and what rights the client obtains, not only in relation to the end-product but also other materials created in the design process such as RAW or native files. But before we delve any further into these disputes, a quick copyright primer.

Copyright is essentially a 'bundle' of exclusive rights that their owner can exercise in relation to defined categories of 'copyright works'. Common copyright works that everyone would be familiar with are literary works (eg a book, a newspaper article) and artistic works (eg graphic designs, photographs). One of the most important rights in the 'bundle' of rights is the right of reproduction – ie the right for a copyright owner to make a copy of their work. When someone else other than the copyright owner reproduces

or 'copies' the owner's work without permission, they are potentially infringing copyright.

Copyright lasts for a fixed period of time and cannot be renewed. Generally speaking, in Australia, copyright in an artistic work lasts for the life of the author plus 70 years.

## RAW files

When a graphic designer creates a new design, the client will be often receive the end-product (or 'deliverable') in a print-ready or work-ready format. In the case of a logo design, for example, this means the client receives an image file (usually in .JPG or .PNG format) containing the logo which it can then use on its business cards, website etc.

In order to arrive at that print-ready file, however, the designer has usually created one or more 'RAW files' which form the basis for its designs. It's not a perfect analogy, but a RAW file is like a graphic designer's source code or blue print – it enables the designer the flexibility and freedom to edit, change and modify their design. The image file (which is what the client typically receives), on the other hand, has far less flexibility and the only changes you can typically make to an image file are to its size, orientation and colour/brightness and, of course, cropping.

## Who owns the RAW files?

Disputes often arise because expectations on either or both sides of the table have not been clearly communicated. In the context of graphic design engagements, a disconnect between what the client expects to receive from their designer and what the designer expected to deliver can be fertile ground for a copyright dispute.

In most if not all cases, disputes can be avoided by addressing these expectations in the Terms & Conditions or written agreement the designer and client negotiate for the particular job. One common way this issue is addressed is to agree a price for the hand-over of the RAW files (if desired) before the project begins.

But what happens if the terms are not clear, or silent on the issue of RAW file ownership?

The Copyright Act 1968 sets out the default position in Australia which is that the author of an artistic work (such as a graphic design) is the first owner of copyright in that work. One important exception is copyright works created for State and Federal government bodies – these are automatically owned by the government, unless modified by agreement. There are several other important exceptions to this rule (eg works created in the course of employment) but they are beyond the scope of this article.

So if the graphic designer owns the copyright 'by default' in the absence of any express agreement on the issue, what rights does the client have in this scenario?

The established legal principles in Australia provide that where a graphic design arrangement is silent on the issue of IP ownership, the graphic designer will, in accordance with the default position under the Copyright Act, retain copyright ownership of the artistic work in the design, but will be required to grant a limited licence to the client to use the design for the purpose contemplated by the parties.

If the 'purpose' included the client's ability to edit and modify the design, there may be an argument that the

“ So if the graphic designer owns the copyright ‘by default’ in the absence of any express agreement on the issue, what rights does the client have in this scenario? ”

licence includes a licence, not only to the image file, but the relevant RAW files as well.

In some cases (eg where the design is for a logo that will be used as a trade mark), the law might even imply an assignment (ie a complete transfer of rights rather than a mere licence) of the copyright from the designer to the client in the logo and potentially the underlying RAW files.

#### A matter of perspective

In our experience, there are often good reasons why a client will want to own the RAW files and similarly good reasons why the designer will want to retain ownership.

A designer principally wants to retain artistic control of their work. By giving away the RAW files, they are essentially handing over their ‘blue print’ of their design for anyone else (including a competitor) to modify. This can affect their ability to do future work for the same client if that client can essentially go elsewhere. There are also issues of artistic integrity and reputation to consider when the RAW files can be modified by someone else to create a new design that might still be associated with the original designer in some way.

Understandably, a client’s perspective may be that they ‘paid for it’, therefore they should ‘own it’. The client may also have an expectation that they can make changes to the design themselves based on their previous experience with other designers.

No one’s perspective is invalid, but it

is how these perspectives (and the expectations that arise from them) are managed that will provide the keys to avoiding a dispute.

#### Avoiding a dispute

Whether you are a graphic designer or a client, disputes should be avoided. They can be costly, the result is often uncertain, and they can cause unnecessary distractions for you and your business. So what can you do?

Be up-front and discuss copyright ownership before beginning the project. Specifically, discuss who should own (or have access to) the RAW files. This should be informed by at least the following considerations:

- What is the scope of the project?
- In what business/strategic context does it sit? Does it have fixed life (eg a single brochure) or is indefinite (e.g. a company logo)?
- What price will the designer charge/is the client prepared to pay for ownership of the RAW files based on the above (and any other relevant) considerations?

In handing over RAW files, the parties should also be aware of third party rights in any fonts or stock image/vectors that may be embedded in the RAW files. You should always review any applicable End-User Licence Agreement for these embedded works to understand the designer’s ability hand-over fonts and stock images as part of a RAW file. Practically speaking, this issue can often be solved by the client obtaining their own licence to the fonts and

stock images/vectors.

#### Conclusion

As with any contractual relationship, beginning with an open and transparent dialogue about each party’s objectives can go a long way to avoiding disputes down the track. In this way, intellectual property should be seen as a useful tool (and one of many) to help the parties reach their commercial objectives and protect their legal interests.



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*This article is adapted from a presentation given by its authors to the Australian Graphic Design Association in Western Australia.*



# NOTIFIABLE DATA BREACH SCHEME – are you ready?

In the event of an eligible data breach, these organisations must:

- Prepare a statement to the Information Commissioner which includes a description of the breach, the kinds of information concerned, and a recommended response plan for affected individuals.
- Take steps to notify any affected or at risk individuals by communicating the statement directly to them or, if this is not practicable, publishing the statement on its website.

The NDB scheme will impose greater accountability and responsibilities on organisations to maintain robust security over their data – and assist individuals compromised by data breaches to reduce any resulting harm. Organisations must also be capable of conducting quick assessments of suspected data breaches to determine if they are likely to result in serious harm.

## Notifiable Data Breach scheme effective 22 February 2018

*The Privacy Amendment (Notifiable Data Breaches) Act 2017, which was examined in earlier issues of the Gatherer [see here](#) and [here](#), establishes a Notifiable Data Breaches scheme in Australia.*

The NDB scheme will commence on 22 February 2018 and will apply to organisations already covered by the Privacy Act 1988 – including businesses with an annual turnover of more than \$3 million, government agencies and private health service providers. The NDB scheme will require these organisations to take certain steps if an eligible data breach occurs, that is, a data breach likely to result in serious harm to the affected individuals.

Please contact us if you require advice regarding your data security and internal privacy practices, procedures and systems to ensure you can comply with the NDB scheme as of 22 February 2018.



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Principal



**ALEXANDRA CHUBB**  
Special Counsel



**PIONEER**  
The podcast series for serious innovators

# AUTHENTICITY, FRIED CHICKEN AND KNOWING YOUR AUDIENCE

In our recent Pioneer podcast interview Wrays' CEO, Robert Pierce spoke candidly with Suzanne Nguyen, social media and marketing guru, sharing her thoughts on authenticity, knowing your audience and her 'fried chicken' concept to growing your network.

If you have been interacting on LinkedIn over the past couple of months, you would most likely know Suzanne as String. For the last two years, String has been pioneering videos on social media. She was a top 20 Meerkat Power user, she produced the award-winning Snapchat channel Women In Tech, and has conducted 200 plus Facebook live interviews with entrepreneurs and start-up founders such as Gary V, Holly Lui from Kebam and Hugh Forrest.

Now though, it's all about LinkedIn videos. As an early adopter, String created one of first viral videos with over 100,000 views – more recently 300,000 views. String's aim is to create the first LinkedIn video channel. She's recently arrived back in her hometown Melbourne presenting as keynote speaker for VideoCon Australia, along with organising LinkedIn workshops in Melbourne, Sydney and Singapore.

*Suzanne Nguyen*

Social Media and Marketing Guru



*Rob: One of my bugbears [about LinkedIn and other social media influencers], and I'm going to ask you about this because you quoted Kieran George who'd said, 'Oh, there are real people on this site now, not business suits and ties only'.*

String: You totally feel the corporate say-so like, 'Look, business suits and ties. Well, no tie, but ...'

*Rob: I know, but my point is that on my picture on the website I'm wearing a tie because I want to present a really formal legal vision to people...*

String: Yes.

*Rob: And you're criticising that – where are you coming from?*

String: I remember someone tried to hire me to do LinkedIn training and then she says, 'No, we're very corporate. We're dealing with CMOs and CEOs and executive levels'. I was like, 'That's probably why you want to talk to me, because you guys have problems. You can't even hire millennials anymore because you don't know how to cater to their needs a little bit'. I just happen to go on the other side a little bit, but I love talking about business and most CEOs that I talk to, and CMOs, love talking about business and how to tackle strategies and KPIs and conversions. I realised in the last couple years, is that if you have traffic but you don't have traffic going somewhere ... It's candy traffic or vanity metrics, right? At the end of the day, you want to have conversions, legions or acquisitions at the end of the day. Or some kind of ROI. It took me three years to get that allowance in place and understand how it works in terms of driving traffic and the ways of driving traffic –

*Rob: These are the benefits and the actual return you get on them.*

String: Yes. And it's only when I started talking about ROIs that I started getting clients.

*Rob: I think we should just go straight into the questions, if that's okay. Normally, we send this off to an editor, but I'm tempted to perhaps not to edit too much from this one because that's your vibe and how you like to do things.*

String: I'm happy to do that. I'm so used to having questions that with the 'one-takes' it almost becomes genuine and authentic. And I realise that people seem to

really vibe with authenticity, especially with fake news coming along the way.

*Rob: It's interesting because you're obviously all about LinkedIn at the moment and that's great. My own transition through social media was Facebook, of course, and I got fed up with Facebook and I've come off there. Then I delved into Instagram a bit. I've realised that no, that's just about posting, all positive stuff, and it's not real. So, I've come off there. Then I had my own Twitter account, and I thought that I don't really want to mix work and pleasure so I set up a work Twitter account. But then that got me really worried that it was coming across as disingenuous. That goes back to this shirts and tie thing.*

String: I get why you're doing it because you're presenting. Lawyers have always been presented in a particular way and you have corporate clients. If you act too much of a black sheep within that space –

*Rob: It can become polarising.*

String: Yes. And you don't want to do that. I am allowed to be an outlier in the space because I do better when I have a fresh perspective or a different point of view. Because of the amount of travel and the number of conversations I have been having, I feel like I'm a walking swat for a lot of people now. And I'm very good at communications.

I have clients who deal with IP and I realise that when it comes to trademark or copyright and you're working like that, you have to be at a certain level where you start having these kinds of conversations in the first place.

*Rob: I agree. You need a real understanding of what that IP is – and yours is the most important of all, it's actually your intrinsic IP.*

String: Which is a trademark brand-wise. If I want to move into a global climate, because that's where I'm leading to, I realise Australia is a small, tiny market. 26 million versus 3.5 billion people worldwide who have access to the internet. Just to give you some context, two billion people are on Facebook right now and half the world doesn't have access to the internet.

*Rob: Please tell me what on earth is 'String's fried chicken party' concept?*

String: I had just closed a deal with a new client. It happened a couple years ago where I started playing

games, playing fried chicken games, on Snapchat to the point where people started associating with me with fried chicken. I realised, because I'm in the marketing game and part of branding is visibility and association, that I could always put fried chicken along the way. To the point where, my friends tag me into every fried chicken post ever on my Facebook page. Literally, Facebook itself is just like an IRS feed for me for fried chicken now.

*Rob: So, the concept is to get people together and talking in an informal way?*

String: It was a joke at first but it came to the point where it has become a thing. Where, every place that I visit, and to be an efficient way of doing things, I just organise fried chicken parties for me and my friends. They just happen to be very awesome and very entrepreneurial in the staff world. To the point where, if they want to hang out with me, it's like, 'Okay, let's just have fried chicken every time I visit a city'. Now, it's become this thing, like, 'Okay, on my birthday, I'm going to have a fried chicken party from now on'.

And I'm using it for social good as well – I got Redbubble on board, I even got you guys on board. Every year I go, I'm going to use my visibility and this laughter to get people together and use food for social good now.

*Rob: Where does the name String come from? Because your name is Suzanne isn't it?*

String: Yes, my real name is Suzanne Nguyen, but for the purpose of LinkedIn I changed it to String. It's always fun to see conservative, old, white guys get upset with me when I tell them that having a marketing degree is irrelevant now. It's like, 'String, I don't agree with you.' It seems so funny when I read the comments out loud. I should probably do that as a video. So, this old dude said, 'String –'

*Rob: Call him out live? I like it.*

String: Well, just the word 'string' in the South, it's so kooky and happy that anything that they say sounds like it defeats the purpose of telling me off about the relevance of degrees.

*Rob: So, the 'G' as everyone calls it in Melbourne.*

String: Yes. It gave me the creativity framework to deliver the output and I became a very good communicator. What I realised is that I didn't fit the

corporate life of 9–5. Every time I woke up, I felt really upset because I didn't feel that I was having an impact. I guess I probably fit the millennial mindset in that regard. Now, I only have projects and/or clients that are in line with my vision and my values.

*Rob: And that's because you're able to cherry pick, because you've built your own brand and you're comfortable enough only taking on projects with which you want to be involved.*

String: Well, if you want to be clear, my vision is to bring the future back to today because I'm a curious geek of the future. I value innovation. I value diversity. I value my family. And I value creativity. I only pick projects that actually align with these principles because I like win-win, triple win situations.

*Rob: Triple win? So, okay, I've heard of win-win. What's the win-win-win?*

String: We both grow and the win is the exponential growth. Because I find that when I do particular projects, I create new standards. So, for example, if you and I partner up together, it's a win-win situation. But because we're creating such a new standard, what happens is that we help people underneath and realise, 'Oh, but these are potential ways of doing things as well'.

*Rob: You mentioned innovation as well. Now, that is absolutely a buzzword at the moment. Innovation means different things to different people. What does it mean to you?*

String: Well, what I realise is that the STEM and the STEAM. The "a" stands for "arts," but it's actually another word for creativity for me. How do you allow creativity in a tech world that's very male dominated? I feel like, it's Atlantis right? We're treating technology like it's a god. We're losing our humanity because we're treating technology as the forefront of innovation, so what I'm doing is adding an element of creativity, fun, and humanness toward this conversation that's already happening.

*Rob: That's so exciting. I was at the AFR Innovation Summit and every panel pushed STEM but nobody mentioned the human element. My son, for example, is pretty strong in his maths, but is also very creative. For him, at the moment, to be trying to figure out where he's going to go in life and what he's going to do, he*

*really wants to maintain that creative element, yet all of the schooling, the people on these panels are saying, "STEM, STEM, STEM."*

String: Of course, it's a buzzword. I know that innovation is always going to continue to be the buzzword, but that's my little take on it. We need to add a humanness and creativity because robots can't duplicate creativity. It's only humans that allow creativity in the conversation. Automation is going to happen. It allows us, it frees us to be better thinkers or philosophers of life. If anything, I feel like we should teach our kids to be critical thinkers, question the why, to be more curious, because these are the tools that will allow kids to be better prepared for the future.

*Rob: I agree. Okay, your tag on LinkedIn says you've achieved this '300k video views' in 30 days.*

String: It was post views, but then it has become true. This, I believe, is a synchronicity manifestation and one of my videos did reach up to 300 views. Which is actually because it's a very A to B platform, right? But I realise that people actually want to hear more vulnerable human self-development stories. Which goes with the philosophy kind of thinking about what it means to be a human in this conversation now.

*Rob: How long have you been involved with LinkedIn?*

String: Probably eight weeks.

*Rob: What?*

String: I get 19,000 profile visits.

*Rob: So, eight weeks?*

String: Yes.

*Rob: My word.*

String: I literally hate LinkedIn. I mean, I hate LinkedIn because the US is terrible. But, I recognise the value in it because literally, I started posting content on there, it became a channel to the point, I have 19,000 profile visits and it's growing exponentially.

*Rob: So, I had a quick look this morning [on linkedin], as a man who shouldn't. The guy, Gary V, seems to be a bit of a hero of yours.*

String: I have total respect for him because I'm duplicating his model.

*Rob: Okay. Duplicating his model. That's a careful choice of words. So, you're aiming to post something every day?*

String: I already post every day.

*Rob: No, but – continue to do that?*

String: Yes, because your opening channel will be me posting a video or me posting a post. I have to maintain that channel now.

*Rob: But the video is the important thing for you?*

String: People come to me for videos. They want to see how I use video or they want to know what I'm doing next on that video space because I feel like everyone's building up their confidence to find a way to use video as part of their marketing as well.

*Rob: Now, let's go back a step. You said you hate LinkedIn?*

String: Yeah, it's terrible UX. Bad user experience.

*Rob: So you've got some 19,000 followers?*

String: No, views.

*Rob: In eight weeks?*

String: Every week, I share my latest ROI. Every two weeks now, I tell people the amount of numbers that come my way because people get impressed by numbers.

*Rob: Well, they guess it adds a bit of credibility, I suppose.*

String: Well, it does, right? Very few people get 19,000 profile visits. 19,000 professionals visit mine and check out what I'm doing. I get about 400,000-450,000 views last month, just for post. I went from, when I first started to be active on LinkedIn, I went from 900 followers to 4,100. I have an exponential growth and understanding of how LinkedIn works right now.

*Rob: You've said it's the new Facebook.*

String: Totally.

*Rob: What's your actual thinking behind that statement? Because Facebook is weekend? It's after work? It's not the real me? Or it is the real me and LinkedIn is not the real me, perhaps?*

String: I actually think people, professionals specifically, they can't hang out on Facebook. But they can hang out on LinkedIn.

*Rob: So, I can't hang out with you on Facebook, even if I was on Facebook again.*

String: No, it's frowned upon if professionals look at social media, but it is okay if you hang out on LinkedIn because it looks like you're working. It's professional. That's why I said Facebook is like the new B to B platform. And plus, people message on LinkedIn, chatting to other people about business or about what they're doing. So, people are generally using LinkedIn as if it's the new Facebook right now.

*Rob: Snapchat. I have to confess to not understanding Snapchat, but my kids love Snapchat and that makes me feel really old, but anyway ...*

String: That's Snapchat's marketing tactic.

*Rob: Women in Tech is your Snapchat channel.*

String: No, I stopped producing for them, but I still help. I was a producer for Women in Tech Snapchat channel, which one a Shorties Award this year. In the beginning of the year, and I'm thankful for that because Snapchat itself was an awesome platform. It's a terrible B to B platform, but a great B to C consumer platform, which is how LinkedIn found me. One of the people who followed me on Snapchat invited me to be a beta tester for video on LinkedIn. That's how I was able to jump from Snapchat to LinkedIn. So, I'm a video innovator.

*Rob: So, that's primarily what you loved about Snapchat – that it was video, video, video?*

String: Yes, it's very video-centric. Very mobile-centric. And they're still killing it in terms of innovation with new video space.

*Rob: How so?*

String: If you look at the way they do publications, they probably create bite-sized content that suits the mobile experience.

*Rob: Aren't Instagram trying to do that at the moment with the video element?*

String: Yes, but they're always duplicating Snapchat.

*Rob: So, other than LinkedIn, what's the most exciting thing you're working on at the moment?*

String: I'm going to set up a LinkedIn TV show. It's like a semi-podcast.

*Rob: Okay. To talk to who?*

String: I'm doing a HR show with a particular startup that wants the leverage of LinkedIn, which I told them is the best platform for them because it's a place where people do recruitment anyway. Being on where the people, or the agencies, are is a great way to build up visibility and a legion for them as well.

*Rob: So, you've been on LinkedIn eight weeks.*

String: Yes.

*Rob: I can't believe that.*

String: And already creating a LinkedIn marketing agency around it.

*Rob: Stunning. How long do you think you're going to be on LinkedIn?*

String: My goal now is to be the first YouTube-like channel, where people will probably pay me to do a video and put it on their channel. That's why I need to license my name because I have the feeling that I might be creating a training course or even doing, I don't know, an Oprah book club. Whatever, I don't know yet. But, I have to license my name so that it can gain household visibility with which people want to be associated.

*Rob: So, this has happened in eight weeks. How long were you on Snapchat for?*

String: Well, video started for me three years ago. I'm just duplicating what I've been doing over the last three years. People think I'm an overnight success. If they call three years overnight.

*Rob: There's no such thing, is there?*

String: Yeah, so people don't see the hard work that's gone in prior to these eight weeks.

*Rob: Finally, you've spoken about push v pull, which is something that Gary V has also talked about.*

String: In the marketing world, push versus pull is another way of saying in-bound versus out-bound. Inbound is the amount of people that come to you – whereas 'pull' is where you pull people that value your thinking, your mindset. And those are the people who are part of your tribe. In contrast, 'push' is when you become super-salesy. I've realised that I'm a better puller than better pusher because every time I've tried to push a sale, my followers get upset with me.

I realised that I was being inauthentic, so I've decided to only talk to the people who actually understand my value sets and my skill sets. If anything, it's better for me to create inbound traffic than outbound traffic.

*Rob: So by creating your content, you're not doing it necessarily to close a particular sale or to generate a particular element of business. Essentially, you're just talking to people and putting out your thoughts.*

String: Yes. It has to be value-based. What I realised with LinkedIn is that it's all about education and providing value, or different insights, to different things. And because I have such a different way of seeing things, that in and of itself becomes valuable.

*Rob: I can certainly appreciate how it's much more important to have the 'pulls' than the 'pushes'.*

String: Every time I close a sale, or I do a hard sale, followers literally unfollow me and say I'm disingenuous. So, I've realised, it seems like I have validated what I needed, which is great, right? Then I started just being authentic and just me. I stopped doing hard sales, but I've had to learn how to find that balance because just being me, and saying, 'hey I'm doing this', often closes the deal better anyway.

*Rob: How much time do you spend on LinkedIn in a normal day.*

String: Probably two hours.

*Rob: Two hours, that's it?*

String: Yes.

*Rob: I thought you were going to say you spent half your life on there.*

String: Well, eight weeks, every two hours is a lot when you accumulate it.

*Rob: I guess so, but you've had a huge impact in that time.*

String: That's probably why I should focus on it, but I have better conversations. If I meet the person, I kind of know if they're generally part of my tribe or not really quickly now.

*Rob: Well, if they turn up with fried chicken, it's probably the first thing. So, I do apologise, but maybe next time you can have some fried chicken off me.*

String: I look forward to those fried chickens.

To listen to this podcast or others in our Pioneer series on iTunes go to Wrays | Pioneer or on our website at [wrays.com.au](http://wrays.com.au)

# WHAT'S ON 2018

## CALENDAR OF EVENTS

### MARCH

#### 2nd

Trans-Tasman Business Circle - The Two Prime Ministers  
SYDNEY, AUS

#### 6th

City of Wyndham WYNovation  
With Dr Charlie Day, CEO - The Office of Innovation and Science Australia  
MELBOURNE, AUS

#### 8th

AusBiotech - Women in Life Sciences Luncheon  
SYDNEY, AUS

#### 15th

CEDA - Innovation, Transforming Australia's world-class research  
Bill Ferris AC, Chair of Innovation and Science Australia

Dr Glenn Begley, Chief Executive Officer, BioCurate

Professor Stan Skafidas, Managing Director, AMD Australia

MELBOURNE, AUS

#### 28th

AICC Cisco Technology Series with Mr Ian Love, Founder of Australia's first Crypto Asset Fund, the Blockchain Early Opportunities Fund

PERTH, AUS

#### 21-23rd

LES ANZ Annual Conference  
SOUTH AUSTRALIA, AUS

### APRIL

#### 29th

LES International Annual Conference  
SAN DIEGO, USA

### FEBRUARY

#### 20th

CEDA - ACCC's enforcement and compliance policy update  
Rod Sims, Chairman - ACCC  
SYDNEY, AUS

#### 22nd

AusBiotech - WA Biocheers  
PERTH, AUS

#### 23rd

CEDA - Economic and Political Overview  
The Hon. Tim Pallas, Treasurer of Victoria  
Michael Blythe, Chief Economist, Commonwealth Bank of Australia  
MELBOURNE, AUS

#### 27 February

Wrays

Welcome to our new offices  
PERTH, AUS

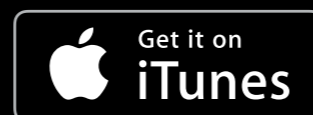
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# THE PRODUCTIVITY COMMISSION DUST HAS SETTLED – WHAT NEXT?

The Australian Government's response to the Productivity Commission's report into the operation of Australia's IP system was released in August 2017. Both the report and the Government's response can be found on the Department of Industry, Innovation and Science website.

Following a public consultation period, several IP policy matters and a number of other measures, which are the subject of a draft Bill intended for introduction to Parliament in 2018, have been supported in the Government's response to the Productivity Commission's report.

## Productivity Commission Report

Readers will recall that the Productivity Commission made a range of recommendations relating to Australia's IP system generally, including international arrangements, patents, trade marks and copyright. Wrays' published an article detailing a number of these recommendations late last year – which were, amongst other things, intended to improve the quality of Australian patents, abolish the innovation patent, further limit the scope and duration of copyright, and improve access to mechanisms for IP enforcement.

## Government Response

The response from the Government has generally been received as a reasonably restrained and considered, but otherwise supportive, reaction to the report.

The recommendations that found support from the Government include:

- the repeal of parallel import restrictions for books to take effect no later than the end of 2017
- liability for the use of orphan works be limited to where a user has undertaken a diligent search to locate the relevant rights holder
- the copyright 'safe harbour' scheme be expanded to cover all providers of online services
- insertion of an objects clause into the Patents Act 1990 that provides a purpose of enhancing the wellbeing of Australians by promoting technological innovation and the transfer and dissemination of technology
- amendments to the inventive step that ensures 'beyond doubt that the assessment of inventive step in Australia is consistent with the European Patent Office'
- abolition of the innovation patent system without impacting existing rights
- implementation of a monitoring and reporting system of settlements between originator and generic pharmaceutical companies to detect 'pay for delay' arrangements
- reduction of the grace period from 5 years to 3 years before new trade mark registrations can be challenged for non-use, and
- the parallel importation of marked goods shall not infringe in circumstances where the goods have been brought to market abroad by the owner or its licensee. The New Zealand approach on this question has been identified as a model clause.

In scenes reminiscent of Monty Python's 'Bring out your dead' from The Holy Grail, it seems the innovation patent still has (just a little) life in it yet.



## Public consultation

A period of public consultation in respect of five IP policy matters was rolled out as part of the implementation of the Government's response. Written submissions were due by Friday, 17 November 2017. Papers relating to the five IP policy matters, which may be accessed here, are itemised below:

- amending inventive step requirements for Australian patents
- introducing an objects clause to the Patents Act 1990
- amending the provisions for Crown use of patents and designs
- amending the provisions for compulsory licensing of patents, and
- introducing divisional applications for international trade marks.

A further period of public consultation was provided, with submissions due by 4 December 2017, in respect of a number of other measures included in the response. The draft Bill, regulations and Explanatory Statement in respect of those measures may be found here, and include the following:

- abolishing the innovation patent system
- expanding the scope of essentially derived variety declarations in the Plant Breeder's Rights Act
- reducing the grace period for filing non-use applications under the Trade Marks Act

- clarifying the circumstances in which the parallel importation of trade marked goods does not infringe a registered trade mark, and
- repealing section 76A of the Patents Act, which requires patentees to provide certain data relating to pharmaceutical patents with an extended term.

It is intended that the Bill will be introduced to Parliament in 2018, following the consultation period.

One last drawn out hurrah for Innovation Patents?

In scenes reminiscent of Monty Python's 'Bring out your dead' from The Holy Grail, it seems the innovation patent still has (just a little) life in it yet.

As the abolition of the innovation patent is not intended to impact existing rights, innovation patents filed before the proposed amendments commence will continue as presently.

Interestingly, it is intended that the existing right to file divisional innovation patent applications of pending standard patent applications, and to convert standard patent applications into innovation patent applications, will remain.



**PETER CAPORN**  
Principal

# A GUIDE TO MANAGING INTELLECTUAL PROPERTY.

Intellectual Property (IP) should be well managed – in the same way that a company manages all of its other assets. Unfortunately, because of the intangible nature of IP, it often gets overlooked. This brief guide aims to identify some of the issues and practices that will assist a company in being more able to effectively manage IP that already exists, and to identify and capture IP that may be created in the future.

## Who may create IP?

Anyone within an organisation can create IP: engineers, managers, technicians, scientists, graphic artists, marketing personnel, web designers etc.

Also important to understand that third parties may create IP, for example, when a company contracts another person or organisation to do some work on its behalf.

## When might IP be created?

Some simple considerations might help.....

- Are new product or service names/brands being coined?
- Are new logos and packaging being created?
- Is a new online platform being launched (e.g. website, social media page)?

- Are problems being solved?
- Are reports, checklists, flowsheets or other summary documents being produced?
- Is money being spent on research, testing or trials?
- Are improvements being made to products, processes, business practices etc.?
- Are things being developed or created within the business that others may wish to copy or which is going to make (or save) money?

If a company is doing any of this, then IP will be created that may be valuable to the company.

## What steps can be taken to help identify and capture IP?

- Document brain-storming sessions for new product and service names and logo designs

- Use good recordal means for inventions such as an Invention Disclosure Document and/ or laboratory notebooks.
- Regularly review any records of inventions and take appropriate steps to protect IP, as required.
- Address IP issues at meetings: in particular R&D meetings, project meetings, marketing meetings, at board meetings, and business development and strategy meetings.
- Liaise regularly with external IP professionals.

## Good business practices

- Consider an IP policy to assist the company to consistently identify, protect, manage and defend its IP
- Develop a sound records management system:
- Have a filing system for correspondence and documents.
- Keep a separate file for every application for a registered IP right.
- Keep an IP database or register, for example using a simple spreadsheet application.
- Don't publish information without reviewing whether it is safe to do so – early publication can remove the possibility of patent or other formal protection later.
- Keep records of publications and disclosures.
- Keep a record of all agreements with third parties.
- Identify confidential documents and mark them 'CONFIDENTIAL' and keep them secure.
- Ensure that ownership and use of IP is addressed in all agreements with third parties.

- Make sure that contracts of employment address ownership of IP and the correct treatment of confidential and proprietary information.
- Use appropriate markings:
  - Copyright © plus the year for copyright materials.
  - ® or ™ to identify registered and unregistered trade marks respectively.
- Regularly review the IP portfolio: is it appropriate for the current and future needs of the business?

## Know the 'IP Landscape'

This is about understanding what is happening in the business environment relevant to the business. It helps identify what customers and competitors are doing. It enables a company to better determine what IP is being created by them, thus reducing the risks of infringement, as well as identifying opportunities for licencing brands and technologies (both 'in' and 'out'). It also assists in identifying any potential third-party infringements of the IP. Knowledge of the 'IP landscape' can be achieved by maintaining a general awareness, for example, by reading trade and scientific publications, attending conferences, or talking to colleagues. More formal searching techniques can also be used, for example, through the use of free databases available using the Internet.

## Promoting an 'IP culture' in the workplace

- Having a healthy IP culture in the workplace can greatly assist with IP management issues.
- Provide education and awareness training for employees.

- Nominate an 'IP Champion' – someone who is a primary contact for IP matters.
- Encourage and reward employees for their innovations.

## What are the risks of poor IP management?

- Money can be wasted because third party rights restrict the utilisation of work that has been done.
- Opportunities may be lost because a company is unable to stop competitors or generate an income from royalties.
- IP that has been created is taken and used by ex-employees or contractors.
- A company could be on the receiving end of an infringement lawsuit.

## Action items – Trade Marks

- What marks do I have/will I have?
- Where am I using them now and where will I use them in the future?
- How am I using them?
- Are they registrable where I use them/will use them?
- What is my trade mark budget?



**ALBERT FERRALORO**  
Principal



**ADRIAN HUBER**  
Special Counsel

# The IP Perspective

with Chris Juhasz

Perhaps one of the least acknowledged, and yet most critical, factors contributing to one's 'success', is luck.

All too often, people will credit their achievements solely to their personal skill and brilliance, hard work, and hustle.

They will rarely mention the role that luck played, and even more rarely (respectfully) give thanks to it.

Perhaps they feel that by doing so they will in some way diminish what they have accomplished. In my mind, nothing could be further from the truth.

I got to thinking of this recently whilst watching an episode of 'Black As' (which you should binge on, if you haven't already). As the ABC's blurb for the show says, in each episode you get to 'go bush with the Black As boys as they venture into the wilds of Arnhem Land, hunting for adventure and a good feed'.

Whilst the adventures of the men are presented in a light hearted manner, as they face and overcome one challenge after another, their amazing survival and mechanical skills are evident. Yet they do not draw attention to them. Instead, they are always humble and respectful of their country, and of how things not within their control have aligned to contribute to their success. I recall comments by the men along the lines of 'aren't we lucky', after once more successfully making camp and finding food in an environment where, to those without their skills, there would appear to be none available.

A funny thing about luck is that it often operates 'behind the scenes', and it is often only by a chance encounter, or some heavy self-reflection, long after an event has occurred that you realise the role it has played.

For example, luck played a huge role in my fledgling career as a patent attorney without me knowing it at the time.

Firstly, the applicant who had initially been successful in obtaining the trainee role at my firm that was to become mine decided, after his first morning at work that it wasn't for him and left for lunch and greener pastures and didn't come back.

As a consequence of that event, the role was readvertised, and I duly sent my application in.

Upon sorting through the resumes for the readvertised role, the attorney responsible noticed that I shared his birthday, apparently commented aloud words to the effect that 'this guy has the same birthday as me – he must be good!' and assured my success in the application process from that moment on.

**'You've got to ask yourself one question. Do I feel lucky? Well, do ya, punk?'**

*SFPD Homicide Inspector Harry Callahan, Dirty Harry*

Of course, it was only years later, over a refreshing beverage or two that I found this out.

Until then, I had mistakenly thought that it was my skilfully crafted resume, brilliant academic performance, and winning personality that had seen me through. Nope – the factor that had given me 'the edge' during the interview process was my birthday.

To those of you who have studied economics, the fact that an element of luck contributed to my success in that case should come as no surprise. Economists have long recognised the importance of luck in success. Indeed, their Tournament Theory, as I understand it, suggests that the output of a worker is dictated by two things – chance as well as skill.

Your skill (genetic gifts, studying hard, getting good qualifications, playing the game, putting in the time, seeing the opportunity, and so on) will get you so far. Chance, or luck, will also play a role in you 'winning' whatever

the tournament may be (be it a promotion, a job, a licensing deal, or a share of the market, for example).

In a business sense, it is quite clear how you can seek to maximise the skill component of this. Defining your objective, having a plan to achieve it, and building and applying yourself, your team, and your network, according to that plan will head you in the right direction.

How do you influence the chance or luck parameter in this equation though?

In my experience, at least part of the key to getting more out of any 'thing' is to show genuine respect for it.

So, it seems that to tip the equation in your favour you could do worse than to acknowledge and show respect to luck, and give due credit where you can see that fate has shined favourably upon you and your endeavours.

Luck is huge. Acknowledge it!

Chris Juhasz is a Principal based in our Perth office. Chris specialises in patents across electrical and electronic engineering, computer technology, software, computer implemented inventions, mobile application technologies and business methods.



**CHRIS JUHASZ**  
Principal

**'success is luck'**

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