

# script

## The place of intellectual property in a world of environmental change

BILETA, Vienna  
29 March 2010

Dr Abbe E. L. Brown  
abbe.brown@ed.ac.uk



Arts & Humanities  
Research Council

# Overview

- Intellectual property and the environment
- The place of other legal fields
- A holistic way forward



Arts & Humanities  
Research Council

script

# Technology and the environment

- “The key thing is to use less coal”
- Cf
- “Technology is at the heart of response to climate change”



Arts & Humanities  
Research Council

script

# The outcome is important...

- CC attribution licence, taken by [Aitor Escauriaza](#), via Flickr



Arts & Humanities  
Research Council

script

# The Scottish

- “Wear an extra jumper”



Arts & Humanities  
Research Council

script

# Do we need technology?

- UNFCCC (1992) Kyoto (1997)
  - targets for 2012 for STATES
  - Bali
    - Copenhagen Accord
- Technology transfer, funding and pooling
  - SBSTA, EGTT, AHWG LCA
- Vague dispute resolution provisions



Arts & Humanities  
Research Council

script

# The new

- CC attribution licence, taken by [Håkan Dahlström](#), via Flickr



Arts & Humanities  
Research Council

script

# The old into new – carbon capture

- CC attribution licence, taken by [2thin2swim](#), via Flickr



Arts & Humanities  
Research Council

script

# The very old and the new

- CC attribution licence, taken by [Jon... in 3D](#), via Flickr



Arts & Humanities  
Research Council

script

# IP, technology and climate change - 1

- Copenhagen Accord (2009) does NOT refer to IP....
- Focus is away from IP new funds, transfer – the real issue?
- BUT ....



Arts & Humanities  
Research Council

script

# IP, technology and climate change - 2

- More patent applications in relation to environmentally sound technologies, by a small amount of companies
  - US Gates patent
  - UKIPO
  - Srinivas, Barton
- Large systems (eg wind farms, carbon storage technologies stations) powered by software
  - copyright
- Ability to inform debate about climate change and progress in respect of targets influenced by access to data
  - copyright/DRM
- TRIPS and strong dispute settlement



Arts & Humanities  
Research Council

script

# The same old question

- National IP rights, privately owned cf state obligations under Kyoto and the public good of the environment
  - IP can encourage innovation and wide public benefit
    - Mandel, Gollin
  - often are licensed
    - Copenhagen Economics cf Chatham House
- Recognised 1992 – Agenda 21
  - Ongoing regard – Srinivas, Abbott, Barton, ICTSD, World Economic and Social Survey, Burleson
  - Focus on patents



Arts & Humanities  
Research Council

script

# Some direct action

- 2007-2009 SBSTA/EGTT outputs at Bonn, Bali, Barcelona, pre Copenhagen
  - “**square brackets**”
    - No patenting, requiring licensing, special section about IP, wide interpretation of TRIPS and take advantage of flexibilities
- EPO/ICTSD/UNEP report in relation to IP, **presented** at Copenhagen
- A **proposal** for a Copenhagen Agreement by Members of the NGO community
  - “protect and share” re IP (pp45, 57)



Arts & Humanities  
Research Council

script

# BUT...

- US objections to weakening IP
  - Bonn, Bangkok, Barcelona (all 2009)
  - Cf TRIPS



Arts & Humanities  
Research Council

script

# Comparison with health and ICT - different...

- IP formed a greater part of climate change discussions
  - Cf Drahos re TRIPS and focus of ITU
- When conflict recognised elsewhere there was change
  - Doha Declaration and Cancun Decision
  - WSIS declarations, particularly at Geneva
  - Draft treaties re Access to Knowledge and Research and Development, WIPO Development Agenda and Standing Committee



Arts & Humanities  
Research Council

script

## ....yet the same

- Calls for Declaration on Climate Change technologies
  - teeth only in WTO cf more likely in WIPO, UNFCCC
  - need **mandatory** compulsory licensing of technology,
- Climate change - earlier consideration of other forms of encouraging innovation
  - UK CCS fund
  - Pools to facilitate sharing
  - Copenhagen Fund
    - Malaria Project



Arts & Humanities  
Research Council

script

# A NEW place for IP

- How to secure wider access to technologies
  - Enable Kyoto (and other) obligations to be met
- Contribution of other legal fields
  - why
  - how



Arts & Humanities  
Research Council

script

# Human rights - why

- Rio and Stockholm, “indivisible”, UN Millennium Goals
- Life, health, environment (esp EU Charter)
  - property, reward
- UN resolutions human rights and climate change
- Well established clash IP and human rights
  - UN resolutions and General Comment



Arts & Humanities  
Research Council

script

# Human rights - how

- Lack of enforcement
  - Courts will prefer human rights in SOME cases
    - National
    - ECtHR
  - CSR
- Legal power remains with IP
  - last year's argument to amend TRIPS



Arts & Humanities  
Research Council

script

# All about competition?

- Kyoto and EGTT focus on technology transfer
  - EU focus competition and climate change NOT IP
  - Discussion about TRIPS and compulsory licensing/technical assistance
  - BUT Barton, Maskus...



Arts & Humanities  
Research Council

script

# Competition – too much power

- No international competition agreement
  - Cf TRIPS, Kyoto, UN human rights
- Common themes: no abuse of dominant position (EU, US, Australia, Canada, South Africa)
  - Important technology subject to IP, required to share?
    - Regulatory action -Microsoft EU, Astra Zeneca
      - need new product? Are there substitutes?
    - Use in national courts
      - *Intel v Via* (England), *Orange Book* (Germany), *SK Kassetan* (Netherlands)



Arts & Humanities  
Research Council

script

# Competition – too much agreement?

- Standards – a more global (yet private) approach
  - ITU methods of evaluation of greenhouse gas emissions
  - ISO – World Standards Day Message 2009
    - Recognised UNFCC
      - *IMS*.....
- If standard requires disclosure and sharing/FRAND
  - *Rambus*
  - *Nokia*
    - essential (for the standard)
- Pools
  - EU IP Guidelines
    - Innovation and competition impact on market
  - VITA - US



Arts & Humanities  
Research Council

script

# Essential technologies?

- Human rights and competition can help
  - if “Essential”
- Essential for what
  - meeting Kyoto obligations
    - conventional clash
  - within the standard
  - addressing climate change
    - BUT could wear another jumper..
    - misallocation of resources, CCS



Arts & Humanities  
Research Council

script

# A global holistic approach?

- Climate change is global problem
  - National obligations
    - US Clean Air Act
- IP is relevant
  - Mandatory declaration
- National and regional competition and human rights
  - if Essential
  - more likely software/data sets of patents
- Global, private standards
  - “essential”



Arts & Humanities  
Research Council

script

# Conclusion

- A private answer to a global problem?
- CC attribution licence The Little Lady via Flickr



Arts & Humanities  
Research Council

script