

課程大綱

課程名稱：文化資產與智慧財產權

(Cultural Property, Human Rights and Intellectual Property rights)

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課程介紹：

這門課將針對最近在有關文化資產方面急速發展的智慧財產權領域作一個探討與反省。除了對這個領域做基本的概念介紹，我們將探究在國際貿易的框架下，它如何不斷的擴張，並且延伸到更多的生活面向。特別值得人類學家注意的是幾個重要與具有可能性的應用範圍：(1)保護傳統智慧，(2)維護生物多樣性，(3)重申原住民的文化權。然而這些應用智慧財產權的方式，並不是沒有爭議，有人積極的尋找這些法律建置中具有彈性解釋空間的部份來位弱勢團體爭取利益；但也有人認為這種工作，反而會商品化文化，讓有勢力與資源的特定人群獲利。

這門課將檢討各種立場的假設與理論基礎，特別是將它們放在資訊社會的脈絡中，去理解這種新的文化政治如何產生與運作，並檢討把財產權與人權連結起來的優點與緊張。

◎ 參考書目

Yudice, G. (1998). *The Expediency of Culture*, Durham, Duke University Press.

Michael Brown

2003 *Who Owns Native Culture?* Harvard University Press.

Peter Drahos and Ruth Mayne, eds

2002 *Global Intellectual Property Rights: Knowledge, Access and Development.*
(Palgrave, Macmillan).

Peter Drahos and John Braithwaite

2002 *Information Feudalism: who owns the knowledge economy*, New York:
New Press.

第一週 ◎課程簡介

第一周 ◎智慧財產的概念

Edwin Hettinger

1989 “Justifying Intellectual Property,” *Philosophy and Public Affairs* 18:31-52.

Carol M. Rose

2004 “Economic Claims and the Challenges of New Property”, in Katherine
Verdery and Caroline Humphrey (eds.) *Property in Question: Value*

Transformation in the Global Economy (Berg Publishers), pp. 275-295.

第二週 ◎智慧財產與知識經濟的關係

Drahos, P

- 2005 'Intellectual Property Rights in the Knowledge Economy', in David Rooney, Greg Hearn, Abraham Ninan (eds.) Handbook on the Knowledge Economy, Edward Elgar Publishing.

Peter Drahos

- 2002 "Introduction: Why 'Information Feudalism'?" In Peter Drahos and John Braithwaite, eds., Information Feudalism (New York: New Press,) 1-18.

第三週 ◎貿易談判與智慧財產的擴張

Peter Drahos

- 1995 "Global Property Rights in Information: The Story of TRIPS at the GATT" 13 Prometheus 6. Reprinted in Peter Drahos, ed., Intellectual Property (Aldershot: Dartmouth Publishers 1999) 419-430.

Drahos, Peter

- 2004 "Trading in Public Hope" in The Annals of the American Academy, 1-21.
Full text available at: Trading in Public Hope.

Martin Khor

- 2002 "Rethinking Intellectual Property Rights and TRIPs" in Peter Drahos and Ruth Mayne, eds., Global Intellectual Property Rights: Knowledge, Access and Development. (Palgrave, Macmillan) 201-213.

第四週 ◎誰來照顧公共領域?

Sol Picciotto

- 2002 "Defending the Public Interest in TRIPS and the WTO" in P. Drahos and R. Mayne, Global Intellectual Property Rights: Knowledge, Access and Development (Palgrave Macmillan), 224-243.

Cori Hayden

- 2004 "Prospecting's Publics," in Katherine Verdery and Caroline Humphrey, eds., Property in Question: Value Transformations in the Global Economy (Berg) 115-138.

第五週 ◎進步、發展與智慧財產

Margaret Chon

- 1993 "Postmodern Progress: Reconsidering the Copyright and Patent Power" De Paul Law Review 43: 97-135.

Vincent Tucker

- 1999 "The Myth of Development: A Critique of a Eurocentric Discourse" in Ronaldo Munck and Denis O'Hearn, eds., Critical Development Theory

(Zed Books) 1-26.

第六週 ◎智慧權全球化下的策略

Sell, Susan K. and Aseem Prakash.

- 2004 “Using Ideas Strategically: The Contest between Business and NGO Networks in Intellectual Property Rights,” *International Studies Quarterly*, 48:143-175

Wright, Sarah.

- 2005 “Knowing scale: intellectual property rights, knowledge space and the production of the global” *Social and Cultural Geography* 6 (6): 903-921.

Helfer, Laurence R.

- 2004 “Regime Shifting: The TRIPS Agreement and New Dynamics of International Intellectual Property Lawmaking” *Yale Journal of International Law*, 29: 1-83.

“Introduction” in Jasanoff, Shelia and Marybeth Long Martello (eds.) *Earthly Politics. Local and Global in Environmental Governance*. Cambridge: MIT Press. 1-30.

第七週 ◎保護傳統知識

Dutfield, Graham.

- 2005 “Legal and economic aspects of traditional knowledge.” in Keith Maskus and Jerome H. Reichman (eds.) *International Public Goods and Transfer of Technology Under a Globalized Intellectual Property Regime*. Cambridge: Cambridge University Press: 495-520.

Cottier, Thomas, and Marion Panizzon.

- 2005 “Legal perspectives on traditional knowledge: The case for intellectual property protection.” in Keith Maskus and Jerome H. Reichman (eds.) *International Public Goods and Transfer of Technology Under a Globalized Intellectual Property Regime*. Cambridge: Cambridge University Press: 565-594.

Tania Li

- 2000 “Locating Indigenous Environmental Knowledge in Indonesia” in Roy Ellen, et al. eds., *Indigenous Environmental Knowledge and Its Transformations* (London: Routledge) 121-150.

Coombe, Rosemary J

- 2005 “Protecting cultural industries to promote cultural diversity: Dilemmas for international policy making posed by the recognition of traditional knowledge.” in Keith Maskus and Jerome H. Reichman (eds.) *International Public Goods and Transfer of Technology Under a*

Globalized Intellectual Property Regime. Cambridge: Cambridge University Press: 599-614.

第八週 ◎生物多樣性與智慧財產權

Michael Brown

2003 “Ethnobotany Blues” in Michael Brown, Who Owns Native Culture? (Harvard University Press, 2003) 95-143.

Kathleen Mac Afee

1997 “Selling Nature to Save it? Biodiversity and Green Developmentalism,” Environment and Planning D: Society and Space 17: 133. Available online at <http://www.yale.edu/forestry/mcafee/sellingnature.html>

第九週 ◎文化與文化權

Jane Cowan et. al.

2001 Introduction in Jane Cowan, Marie Benedicte Dembour and Richard Wilson eds., Culture and Rights: Anthropological Perspectives (Cambridge University Press, 2001) 1-26.

Engle Merry, Sally

2001 “Changing rights, changing culture” in Jane Cowan, Marie Benedicte Dembour and Richard Wilson eds., (2001) Culture and Rights: Anthropological Perspectives (Cambridge University Press) 31-51.

第十週 ◎商標與認證的應用可能

Michael Brown

2003 “Sign Wars” in Michael Brown, Who Owns Native Culture (Harvard University Press) 69-94.

Nicholas, George P., Bannister, Kelly P.

2004 “Copyrighting the Past?” in Current Anthropology, June 2004, Vol. 45 Issue 3, p327-350.

Rosemary Coombe

2005 "Legal Claims to Culture in and Against the Market: Neoliberalism and the Global Proliferation of Meaningful Difference." Law, Culture and the Humanities 1(1): 32-55

第十一週 ◎文化版權化與文化挪用

Michael Brown

2003 “Cultures and Copyrights” in Michael Brown, Who Owns Native Culture? (Harvard University Press) 43-68.

Rosemary J. Coombe

- 2003 "Fear, Hope and Longing for the Future of Authorship in a Revitalized Public Domain" *De Paul Law Review* 52: 1171-1191.

Brown, Michael

- 2005 "Heritage Trouble: Recent Work on The Protection of Intangible Cultural Property" *International Journal of Cultural Property*, 12:40-61.

第十二週 ◎文化觀光與文化財產權

Philip Scher,

- 2002 "Copyright Heritage: Preservation, Carnival and the State in Trinidad" *Anthropological Quarterly* 75: 453.

Jones, Samantha

- 2005 "Community Based Ecotourism: The Significance of Social Capital." *Annals of Tourism Research* 32 (2): 303-324.

Johnston, Alison M.

- 2006 *Is the Sacred for Sale? Tourism and Indigenous Peoples*. London: Earthscan, 1-21, 52-108, 226-285.

Rosemary J. Coombe, Steven Schnoor, and Mohsen al attar Ahmed

- 2005 "Bearing Cultural Distinction: Intellectual Property and New Expectations for Intellectual Property," in W. Grosheide, and Jan J. Brinkhof, eds., *Intellectual Property Law: Articles on Crossing Borders between Traditional and Actual* (Antwerpen - Oxford: Molengrafica/Intersentia) pp. 193-213.

Aylwin, Nicole and Rosemary J. Coombe

- 2006 "Taking Inventory: (Re)constructing Cultural Diversity and the Possibilities of Intellectual Property." *Media Development (WACC)*.

第十三週 ◎自由與免費的未來?

Kembrew, McLeod

- 2005 "Confessions of an Intellectual (property): Danger Mouse, Mickey Mouse and My Long and Winding Path as a Copyright Activist." *Popular Music and Society* 28(1), 79-93.

David, Paul A

- 2005 "Koyaanisqatsi in cyberspace: The economics of an "out of balance" regime of private property rights in data and information." in Keith Maskus and Jerome H. Reichman (eds.) *International Public Goods and Transfer of Technology Under a Globalized Intellectual Property Regime*.

Cambridge: Cambridge University Press: 81-120