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**Alessandra Feller**, a counsel in the Milan office of K&L Gates, focuses on corporate law, information technology, industrial and intellectual property. Since 2001, she has also lectured on company and business law at Bocconi University, Milan has authored various publications on company law.

**George C. Summerfield**, a partner in the Chicago office of K&L Gates, has more than 30 years of patent litigation experience. He has assisted several Eastern European governments in drafting IP laws through programs administered by the Department of State and the US Information Agency.

INTELLECTUAL PROPERTY (IP) REFERS TO CREATIONS OF THE MIND, SUCH AS INVENTIONS, LITERARY AND ARTISTIC WORKS, DESIGNS, SYMBOLS, NAMES AND IMAGES USED IN COMMERCE. THE BEST-KNOWN TYPES OF IP ARE COPYRIGHTS, PATENTS, TRADEMARKS AND TRADE SECRETS. PERHAPS SURPRISINGLY, BILL GATES ONCE SAID THAT “INTELLECTUAL PROPERTY HAS THE SHELF LIFE OF A BANANA” BUT HE KNOWS BETTER THAN ANYONE ABOUT THE FORTUNES THAT CAN BE EARNED FROM IP. LAST MONTH, CYPRUS SEEDS HOSTED THREE INTELLECTUAL PROPERTY EXPERTS FROM THE INTERNATIONAL LAW FIRM K&L GATES – GEORGE C. SUMMERFIELD, CHRISTOPHER J. VALENTE AND ALESSANDRA FELLER – WHO CONDUCTED SEMINARS AND WORKSHOPS, AND MET WITH NGOS AND STAKEHOLDERS ON THE ISLAND TO DISCUSS INTELLECTUAL PROPERTY AND COPYRIGHT PROTECTION FOR ENTREPRENEURS. DURING THEIR STAY, THE THREE OF THEM SPOKE TO GOLD.

By John Vickers  
Photo by TASPPO



ou're in Cyprus to advise on intellectual property and copyright protection for entrepreneurs. This suggests that there may be a lack of knowledge or experience regarding the issue here. Is that the case?

**George C. Summerfield:** I wouldn't characterize it as a lack of knowledge. I think part of the problem – and this is true in any country – is that there are gaps in information when it comes to hyper-technical things like patents. People can be engaged in very worthwhile technical research but then the question arises about what to do with it. We're talking about scientists, not lawyers, economists or business people, so it's important to educate the researchers on these issues. Our presence here is intended to fill in some of those knowledge gaps.

**Christopher J. Valente:** We've toured a number of institutes and universities and we have seen that there is a phenomenal level of research and invention and inordinate potential in the work that's going on across those institutions. Cyprus Seeds and other entities like it are trying to capture that momentum and it is transformational for someone who is only thinking about research to start thinking, "What are my next steps? How do I commercialize this product?" We are happy to be part of this process.

**Alessandra Feller:** There is an awareness of the importance of knowing how to protect intellectual property rights, a great

# KNOW YOUR (IP) RIGHTS



amount of activity going on and there is clearly great interest on the part of people in knowing more about this topic.

**GOLD: What sort of things have you been telling people? What's the message been from you?**

**C.J.V.:** More than a specific message, it's just educational. We talk about the issues and open ourselves up for questions. Part of what we've been doing over the past few days has been about bringing the entire audience to a level where a question makes sense to everyone in the room. There are definitely people here who are much further along in this process than others, but everybody is interested and everybody can participate. So we've done a lot of foundational work and that leads to good discussion and good questions. We've had many people coming up to us afterwards, asking more detailed questions or exploring different areas of their research and business.

**GOLD: How important is it – for new companies, in particular – to take care of their Intellectual Property from the very beginning?**

**G.C.S.:** When people set off on research, where it winds up is anybody's guess: it may end up going nowhere but it may result in a blockbuster pharmaceutical product, for example. So I think that, just to be on the safe side, anyone engaged in inventive activity ought to have in place a systematic approach to documenting

it and ensuring that they follow all the steps necessary to be able to file a patent application when and if they are ready to do so. When you're a researcher, there's always a tension between publishing and getting it out there amongst your peers and the idea of protecting your Intellectual Property. Publication can be a bar to later patent application so a balance has to be struck, which satisfies the researcher's need to publish before he's beaten to the punch by other researchers or institutions but allows him or her to file a patent application. Those are conflicting goals but they are not mutually exclusive and if you have the appropriate system in place, both can be accomplished.

**GOLD: Thirty years ago, Cyprus had a bad reputation for music and movie piracy and for counterfeit goods. Action was taken, laws were amended and much has changed as people came to understand the basic concept of intellectual property. In your experience, what is the situation in other countries, including the US?**

**A.F.:** There's more awareness everywhere and in EU countries things are probably easier because they have to implement clear European directives or regulations. It is true that, until some years ago, there was not enough knowledge and awareness of what you could do and couldn't do but now the concepts surrounding intellectual property are more common knowledge and that helps. The US was probably

more developed in the past but I think that the rest of the world has caught up now.

**G.C.S.:** People traditionally thought that there was no harm in buying a pirated video, for example, and believed that there was no victim but as consumers have been educated about the fact that there is a real, tangible loss, they have come to realise that they should not be countenancing piracy. When you take away the market, you also take away the incentive for people to get involved in that kind of business.

**GOLD: Intellectual property is not something that most people hear about but, of course, it has recently come to the fore due to differences between the United States and China and claims that Chinese intellectual property theft is impacting America's national security, commerce and even the defence industry. How serious an issue is it?**

**G.C.S.:** This isn't the 1980s anymore and, as Alessandra said, the world has gotten its intellectual property house in relative order. Is there still intellectual property theft? Sure, and with China, you just need to look at the patent infringement filings in the United States to know that it's going on. Would I say that it's any worse there than in other places? It's a little hard to quantify because, often, you don't know what's going on behind closed doors in the big Chinese electronics companies. But that's also true in the United States. It's not as

if US companies are immune to patent infringement and if you also look at filings the United States you'll see that a number of big American companies are defendants as well. So I think the best we can hope for on the international stage is to raise awareness, have the right national laws in place everywhere and have the mechanism to enforce those laws because 25 years ago there were a number of countries around the world that had perfectly fine intellectual property laws but absolutely zero enforcement. That's changed.

**GOLD: The head of China's State Intellectual Property Administration (NIPA) has announced that the country intends to implement a strict intellectual property protection system. Isn't it ironic that China should have such a bad record on IP issues when it actually ranks first in the world in terms of patent and trademark applications?**

**G.C.S.:** The short answer your question is yes but what you're getting at is a little more involved. There are two components to that: (1) filing for patent protection, which has its own set of criteria as to whether or not you do that, and (2) what do you do with the patents when you get them. There are certain sectors where patenting virtually everything is paramount for a number of reasons but that does not necessarily equate with respect for the intellectual property of others.

# I THINK WE ALL KNOW THAT MUSIC AND MOVIES ARE NOT FREE. PEOPLE ARE MORE AWARE NOWADAYS

**GOLD: How has the spread of the Internet affected the whole concept and business of Intellectual Property?**

**G.C.S.:** Before the Internet, as far as the patent examination process was concerned, some examiner with the technical background would examine a patent application compared to everything that came before it to see if it basically satisfied the requirements of patentability vis-à-vis the prior art. That literally used to be a hand search through a stack of documents, so the quality of the prior art search was dependent upon what prior art the examiner had available to him or her and how efficiently he/she could go through it. With the Internet, you can locate disqualifying prior art reference simply by doing a Google word search! So now you have access to prior art that just practically wasn't available back in the day of hand searching through paper documents. I was involved in litigation several years ago where a patent was invalidated by two references from East Germany. I'd never seen an East German patent before but – lo and behold! – the Internet allowed the company we were litigating against to find these things. Ten years earlier, I am almost certain that those references would have never surfaced.

**GOLD: What about the broader effect of the Internet on other aspects of Intellectual Property?**

**A.F.:** There are more risks and different risks related to infringement of copyright, for example. New technology means new ways of infringement, which perhaps couldn't even have been imagined some years ago. In Europe, we are currently wait-

ing for the implementation of the new EU copyright directive. This is field which is very interesting because there is always something new to deal with. It's true that the Internet has probably brought new risks with respect to the past but it has also brought new opportunities of development for intellectual property rights, so we need to take into account both the advantages and the disadvantages.

**C.J.V.:** Companies definitely have to be more aware because, in addition to intellectual property in its truest sense, you have brands, you have e-commerce and other aspects of the Internet that are tangential to or touch upon intellectual property and need protection. Protecting your brand means a variety of things, including going after counterfeiters and resellers in the 'grey market' who are reselling your devices.

**GOLD: Following the verdicts in numerous high-profile cases where people who have bought domain names in order to sell them have lost the right to use the name, has the so-called 'cybersquatting' problem come to an end?**

**A.F.:** No. It's still happening and it's another potential risk that companies have to take into account and deal with as part of their ordinary activities.

**GOLD: What can be done to change the mindset of people who believe that music and movies should be free and so have no qualms about downloading illegal copies?**

**A.F.:** I think we all know that

music and movies are not free. People are more aware nowadays.

**C.J.V.:** Piracy was obviously a big issue for many years but the industry has matured and people understand how to prevent it and mitigate against it but the risk never really goes away. It still exists, just like cybersquatting still exists and I don't think it will ever disappear completely. The problem will arise again in a different form.

**GOLD: On the subject of counterfeit goods, there will always be a market for them as long as people are happy to wear fake Rolex watches and to carry fake Gucci handbags. Is there any way that counterfeiting can ever be brought under control?**

**C.J.V.:** From the business's perspective, most countries allow them to minimize or mitigate against the problem of counterfeit goods. They still exist but a growing issue, and one that is especially problematic for luxury brands, is the 'grey' market: illegal sales of genuine products that should not have entered a particular market. We do a lot of work in this area and use a lot of intellectual property-based tools to protect both the brand and consumers.

**GOLD: How optimistic are you that consumers will eventually view intellectual property in the same way that they view material property and understand that they can't simply steal something they like? Are we still in need of more education?**

**A.F.:** Again, I think that there's more awareness on the part of today's consumers and I think that, actually, the big players

on the Internet and the companies availing themselves of e-commerce are increasingly aware and careful about the consumer experience. There is regulation and there are rules to protect consumers. Of course we can always improve but I think we are on the right path. There is greater awareness but, of course, there can never be too much education...

**C.J.V.:** ...Which bring us back to why we are here! Cyprus Seeds is literally trying to plant the seed and educate people and if you look at some of the programmes that it has for its grantees, there is much more there than just education on the commercial aspect, on commercialization and on legal issues.

**G.C.S.:** It can't be overstated how important the involvement of an organisation like Cyprus Seeds is. In most countries, it's a real 'chicken and egg' situation: How do we invest before we have the necessary intellectual capital but where will we find it without investment? It so often takes an entity like Cyprus Seeds to step up and infuse some real capital and some human capital into the effort to make sure that these young companies are able to survive. In many countries, that simply doesn't happen and it's so hard for small companies, especially, to go it alone but without support, invention dies on the vine. In a country like the United States, there is some funding but not nearly enough to go around so I think that Cyprus is lucky because it has the research and it's getting the resources to do something with it. Believe me, that is unique.

*Thanks to The Landmark, Nicosia where the photo was taken. G*