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**Determinants of Failure and Success in Australian Domain Name Disputes –
*Andrew F Christie***

This empirical study of decisions under the .au Dispute Resolution Policy finds that complaints typically fail due to the complainant’s inability to prove that the respondent does not have rights or legitimate interests in the domain name. This is so whatever is the nature of the legal right on which the complaint is based, and whether or not the respondent defaults. Complaints typically succeed because the complainant can prove that the respondent is using the domain name to attract Internet users to a website by creating confusion between the domain name and the complainant’s name or trademark. Complaints succeed more often when the complaint is based on a trademark, because of the necessarily distinctive character of a trademark. Where the trademark is registered, complaints succeed more often because it is relatively easier for the complaint to prove the respondent’s bad faith. Complaints in which the respondent does not file a response succeed more often because it is easier in those cases for the complainant to satisfy all of the requirements of the Policy. 183

**Legal Reform to Address the Misappropriation of Indigenous Art in the Australian Souvenir Market –
*Andriana Georgiou***

The misappropriation of Indigenous art is a widespread practice in the Australian souvenir market that disproportionately impacts Indigenous artists and communities. The prevalence of misappropriation is in part attributable to the limitations of Western conceived intellectual property laws, which are ill-equipped to protect the rights of Indigenous artists. This article examines the limitations of existing legislative frameworks – the *Copyright Act 1968* (Cth) and the *Australian Consumer Law* – to protect against the misappropriation of Indigenous art and analyses the most suitable options for legal reform, assisted by international legislative comparisons with South Africa, the United States and Panama. 189

**A Reckoning of Policy, Property and Proposals: TRIPS Waiver Discourses and the Politics of the Global IP Regime –
*Emma Fu***

In the context of the discussion on India and South Africa’s proposal for an Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) intellectual property (IP) waiver pertaining to COVID-19 vaccines and related diagnostics, the language used by primary stakeholders to justify IP is illuminating. By sketching a brief history of TRIPS and the nature of the legal framework it creates, and by examining how the United States, the European Union, Pfizer, the Bill & Melinda Gates Foundation and South Africa communicate ideas and values relating to IP, this article situates the TRIPS waiver debate within a historical context to demonstrate how characteristics of the global IP regime are

perpetuated or are undergoing change. This article concludes that the ensuing discussion offers significant scope for re-imagining an international IP order that enables more equitable access to health between countries of the global North and South. 219

The TRIPS Waiver for COVID-19 Vaccine Patents: Lessons for the Transfer of Technologies – *Hannah Lawrence*

Addressing climate change requires the rapid transfer of environmentally sound technologies (ESTs). Although intellectual property rights (IPRs) are not, at present, a significant barrier to the transfer of ESTs, reform is required to ensure that international intellectual property law does not hinder the future transfer of ESTs. The World Trade Organization’s Ministerial Decision of 17 June 2022 waives patent rights over COVID-19 vaccines. This article analyses whether this Decision provides lessons for the transfer of ESTs. This article recommends a Trade-Related Aspects of Intellectual Property Rights (TRIPS) waiver for EST IPRs. Alternatively, it recommends subsidies for the licensing of ESTs, and amendments to compulsory licensing and government use under TRIPS. 244

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