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LICENSING EXECUTIVES SOCIETY  
BENELUX

# NEWSLETTER

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## Dear Members,

It is a great privilege as well as a pleasure for me to serve as president of our society and I look forward to a fascinating year. At the same time, I am conscious of the high standards set by our past president, Emma van Oosterom, who I am happy to say will continue on the board and no doubt be a source of wisdom, experience and good advice. Emma's steady hand guided the society through two great but demanding years, crowned by the successful LES International Conference in Amsterdam last May.

Meanwhile we welcomed the new board members Gregor Vos, Anne De Roo and Dirk Groenewegen, who have enjoyed the usual "running start" and are already at full speed. The Program Committee plans five topic meetings as well as a repeat of the "Licensing Course" during 2001. That is a tough schedule to meet, particularly since a great deal of thought and preparation goes into the choice of topics, speakers and locations so as to provide interesting and current subjects for members and non-members alike.

Our membership continues to grow, and that depends critically on the continuing appeal of our meetings and courses. I would urge you to do your bit in actively bringing the society's meetings to the attention of those in your vicinity who could benefit. Please look through the list of topics planned and make contacts accordingly. This year includes full day meetings on Biotech and "LES meets the EU Commission" which drew many people on previous occasions.

Several initiatives are being progressed to upgrade the quality of the society's services and products for the members. One is the re-styling of this newsletter, visible for the first time in this edition. We are also examining various possibilities for the society to stimulate education on licensing. I will be giving you more information during the year as these activities unfold.

Finally, I would like to draw your attention to two facilities, provided by LES International, which can add more value to your membership. One is the LESI web site ([www.lesi.org](http://www.lesi.org)), which has three levels, all accessible to LES members. You will need a password for level 3 but as a member you can easily obtain one by registering on line through the site. The site contains information, links, and a database of papers and speakers from recent international meetings. The other facility I would mention is the networking in the various industrial sectors (e.g.

Biotech, Health Care, Automotive, Chemical, e-Commerce), and in other areas of interest, which emanates from the work of LES International Committees. The LES Benelux board members and other members of international committees will be pleased to introduce you to these networks and their activities.

## Nigel Wagstaff

President, LES Benelux

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Emma van Oosterom and Nigel Wagstaff,  
the past and present president of LES Benelux.

## Will Noah open the flood gates?

by Michael Douglas, Wilson Gunn M'Caw - Manchester, United Kingdom (published in LES B&I NewsXchange)

The future may be brighter than expected for one of the world's many endangered animal species, thanks to cloning research being carried out by a team of US bioscientists. Researchers at Massachusetts-based biotechnology firm, Advances Cell Technology (ACT), have announced that they are attempting to clone the gaur, or Indian bison. The existence of this huge, ox-like creature has come under threat in recent years, says ACT.

A number of biotechnology companies are currently looking at ways to exploit the new field of animal cloning technology, which grabbed the headlines three years ago following the birth of Dolly, the (cloned) sheep. ACT has obtained an exclusive license to use a cloning procedure patented in the US by the University of Massachusetts, which has also related patent applications proceeding elsewhere around the world. It is this cloning technique that gave us Charlie and George, the first cloned transgenic cows, produced from genetically altered body cells in 1998.

In ACT's latest experiment, cells derived from the skin of a bull gaur were each fused with a domestic cow egg cell from which the DNA-containing nucleus had first been removed. Resultant embryos were implanted into the wombs of cows, the majority of which, as is common in such animal cloning experiments, miscarried. However, one of these cows is due to give birth to soon, to what ACT believes will be a normal gaur calf. Although the calf will not be 100% gaur, due to a small amount of the donor cow's DNA remaining in the egg cell during the cloning process, he will be the first cloned animal conceived using an egg and surrogate mother of entirely different species. The scientists behind this remarkable research have apparently already named the calf Noah, after the Biblical character who rescued the world's animals from destruction. Not everyone is convinced that cloning is the best strategy for animal conservation however, and in fact the 'endangered' status of the gaur has been questioned. In addition, the inherent difficulties known to be associated with animal cloning techniques, including high rates of miscarriage and physiological abnormalities, are proving difficult to overcome in many cases.

Undeterred, ACT has apparently now set its sights on the recreation of an animal species that has already become extinct. The last known bucardo, a species of Pyrenean mountain goat, died last year, and Spanish scientists took tissue samples from its body for cryogenic storage. It is thought that the close genetic relationship between domestic and mountain goat species may allow the extinct bucardo to be resurrected through cloning using DNA from these frozen cells and egg cells from domestic goats. Should ACT's cloning research prove successful, it may herald a new area in animal conservation. Indeed, a number of other research groups are already investigating the possibility of cloning the endangered giant panda, and a major publicly funded project is underway in Australia to resurrect the long-extinct Tasmanian tiger through cloning.

## The patrimonial aspects of IP rights

by Olivier Lemaire, Nauta Dutilh - Brussels

In a decision of 21 June 2000 the Constitutional Court held that the Flemish community has competence to regulate some patrimonial aspects of IP law. In July 1998, the Flemish community adopted a Decree, which regulates inter alia the patrimonial aspects of "discoveries" made by university researchers (Article 103 of the Decree). Under "discoveries", the Decree covers patentable inventions, biological products, designs, chips, computer programs and databases. It does not cover copyright and trademarks.

To sum up, the Decree provides that the patrimonial rights to discoveries made by university researchers or by holders of scholarships granted by Flemish public research funds belong to the university. The university has the right to exploit, including the right to transfer, the discovery and to apply for intellectual property protection (patents, chip protection, computer programs right, sui generis database right). The "discoverer" has a right to an equitable indemnity based on the financial products of the exploitation of his discovery. Should the university neglect to protect correctly the discovery within a reasonable time period, the "discoverer" recovers his rights to get a protection on its own. The "discoverer" also has the right to file applications for protection of his discovery in the countries where the university has not applied for such protection. The Belgian Constitutional Court confirmed that the Flemish community has competence to regulate those aspects of IP law, which normally belong to the exclusive competence of the federal legislature.

The decision will have significant consequences for companies having concluded research contracts with Flemish university research departments or directly with Flemish university researchers. It is, indeed, not self-evident that the patrimonial aspects of the discoveries made by those researchers can or will be transferred to the financing company. A case-to-case approach will be necessary to ascertain which intellectual property rights belong to whom, and for which countries.

## Press Release LESI February 2001

*LES, the premier global business association for licensing*

LES, the Licensing Executives Society International Inc., is heading for another remarkable year. The year 2000 was highlighted by reaching the milestone of more than 10.000 members world-wide and the restructuring of the fast-growing association as a corporation. The first highlight of 2001 was a seminar on E-commerce and Licensing, entitled "Bringing Licensing and Technology Transfer to the Forefront of E-commerce". The seminar, held on 26 January in Delray Beach, Florida, featured US, Mexican and European practitioners skilled in the most current issues of valuation and licensing for this emerging area and was attended by an international audience.

Speakers and audience discussed many of the multiple and complex issues related to licensing and e-commerce, ranging from the economic impact of investors returning to proven technology, electronic databases, legislation of the use of digital forms to, extension of the range of domain names and including the "hot" issues of patenting business methods related to e-commerce.

LES is a business-oriented association and its membership includes business executives, scientists, engineers, academicians, lawyers, patent and trademark attorneys, government officials and others from large, medium and small companies, independent firms, universities and R&D organizations, government organizations and consulting firms. This membership is a unique blend of business, technical and legal professionals, and thus is different from all other professional associations involved with IP related matters.

LES was founded in 1965 in the USA and has almost 30 societies covering more than 50 countries, including all the major economic areas, with around 10.000 members world-wide. Each national or regional society is composed of men and women who have an interest in the transfer of technology or licensing of intellectual property rights - from technical know how and patented inventions to software, copyright and trade marks.

The purpose of LES is to establish licensing (in its broadest sense) as a profession, enabling its members to meet, to learn from one another and to encourage high professional standards among the individuals engaged in licensing of intellectual property rights and the transfer of technology.

The objectives of LES are to function as a non-profit professional society, encouraging high professional standards among individuals engaged in the transfer and licensing of technology and industrial or intellectual property rights; to assist its members in improving their skills and techniques in licensing through self-education, the conduct of special studies and research, the sponsorship of educational meetings, the publication of statistics, reports, articles and other material, and the exchange of ideas related to domestic and foreign licensing; to inform the public, international bodies, governmental and academic bodies, and the business community concerning the economic significance of licensing and the high professional standards of those engaged in the licensing profession and to make available to its members the latest, most accurate, information on licensing.

### **A portrait of Nigel Wagstaff, President of LES Benelux**

I have been a member of LES since 1991 and it has been an important way for me to stay abreast of developments in technology transfer throughout a period when I held various jobs in Shell, mainly in R&D. I joined Shell in 1971, straight from University in the UK, where I graduated in chemistry. I had no idea then that I would spend my entire career in the Netherlands and sink roots here; and I had equally little notion that I would develop a long-lasting interest in licensing and intellectual property.

About sinking roots, my wife Roelie and I met at Shell in Amsterdam where we were both working at the time. We married in 1973 and have 2 children, Janette, 18, and Peter, 16. Janette is

currently enjoying a half-year break from studies in Australia. Last heard of (yesterday) scuba diving on the Great Barrier Reef. When she returns to the Netherlands she plans to study law, but seems to be more taken with criminal defense law than intellectual property rights. Peter is making his way through school and has a technical bent. I was going to say that this is probably not in chemistry, but as he has just scored a 9.2 for a school test I'll shut up!

Roelie and I live since 1981 in Aerdenhout, a few minutes walk from the railway station at Heemstede, which is very convenient for getting to Amsterdam, The Hague, and the main locations for LES meetings. In fact we moved there when I was transferred to the Hague offices of Shell where I had my first experience of licensing (refining process technology). The work took me to many external customers, and because process licensing involves intensive co-operation between the IP/legal, commercial and technical departments it taught me the value of teamwork and the importance of the different skills and experience each function represents. In 1990 I returned to the Amsterdam laboratory to a succession of R&D management jobs, taking on the challenges of membrane separation technology, analytical chemistry and finally catalysis. I tried to bring the external focus I had gained while licensing technology into the atmosphere of the laboratory.



*Nigel Wagstaff  
and his wife Roelie*

It has been a time of immense change in big corporations like Shell, and I was glad to have had the experience "outside" and to have a second string to my bow.

Last November I successfully applied for the position of Intellectual Asset Manager for Shell International Chemicals technology, and by a strange coincidence I started the job on November 15, the same day I was elected president of LES Benelux at the Annual Meeting. Quite a day, all in all!

Intellectual asset management is a tremendous and varied challenge, with many facets, which most large companies are now trying to put into top gear. The variety of topics featured at LES meetings is a valuable source of inspiration to me and the society must keep alert for the topics, which are on the horizon now but will soon command all our attention. Although remote from my working interests, I have personally enjoyed and learned much from seeing the Biotech story unfold at LES Benelux and LESI meetings, and there are other examples of meeting themes, which broaden and enrich.

Besides LES my main hobby is golf, which by the way is not a sport but a disease; any activity which captivates so many people who play it so poorly (myself high on the list) has got to be at least an unhealthy obsession. Besides that, I am fond of

organizing social events at the golf club, and Roelie and I love being around our house and garden, especially in the summer. I hold an Ajax club card (yes!) and go to a few matches each season with Janette and Peter. And I still follow, from a distance, British football and cricket, despite the BBC having lost certain broadcasting rights in these fiercely competitive times.

In closing, I would like to say how welcome I have always been made to feel as a LES member, and I do hope all our members will share that feeling. The work of the society is constantly shifting its focus and the officers devote a lot of thought to making our events interesting and pleasant for the members.

I look forward to seeing you soon at one of our meetings.

## The neighboring rights of performing artists

In order to have a better understanding of the – in the Benelux relatively new – neighboring rights of performers, the author first analyses the international and European framework and more particularly: the Rome convention (1961), the European directives (1992 and 1993), the GATT TRIPs (1994) and the WPPT (1996). After an in-depth analysis of the Belgian Copyright Act (1994), follows a comparative study of the German, French and Dutch law.

Through the whole study, the author maintains the same model for analysis. In the introduction of each legal instrument, its origin and the general principles on which it is based (national treatment, etc.) are clarified. After that, its material provisions concerning the neighboring rights of performers are explained: the coexistence of this right with others (e.g. copyright), the

definition of a performer, the moral and patrimonial rights of the performer (including the legal licenses and the exceptions), the holder ship, transfer and exercise of these rights, their term of protection and the sanctions in case of their non-respect. In the concluding remarks, formal aspects such as the coming into force, the application in time and, for the international and European instruments, their enforcement, are discussed, followed by a general evaluation of the protection offered to the performer. Finally, some schemes of the articles of these legal instruments applicable on certain issues of protection of the performers are included.

Author: Fabienne Brison; title: "Het naburig recht van de uitvoerende kunstenaar", in Dutch; ISBN 2-8044-0726-8; price: 4930 BEF (VAT and mailing costs for Belgium included). Information: herman.verleyen@larcier.be.

### Upcoming Meetings LES Benelux

**14 March 2001** - Symposium Intellectuele Eigendom; organised the Dutch Grouping of AIPI; Zeist, The Netherlands; for information and registration phone + 31 20 684 39 47; e-mail c.appelman@wanadoo.nl.

**4 April 2001** - "Challenges occurring during the life time of license agreements"; Holiday Inn – Brussels, Belgium;

**6 June 2001** – "Biotech and IPRs - keeping up with developments"; Holiday Inn – Leiden, The Netherlands

**5 October 2001** – 'LES Meets the European Commission'; Holiday Inn City Centre – Brussels, The Netherlands;

**28 November 2001** – 'Trademarks and Character Licensing'; Rotterdam, The Netherlands;

**13 and 14 December 2001** – 'Third LES Benelux Licensing Course'; Begijnhof Conference Centre, Leuven, Belgium.

For all LES Benelux meetings invitations with registration forms will be distributed in due time. Updated program and registration form are also available at the web site [www.les-europe.org/benelux](http://www.les-europe.org/benelux). For questions and remarks, please e-mail to [meetings@benelux.les-europe.org](mailto:meetings@benelux.les-europe.org).

### LES Benelux has been pleased to welcome the following new members to the Society:

- Mark van Breda, KPN, The Hague (NL);
- Fabienne M. Brison, Nauta Dutilh, Brussels (B);
- Henk Buter, KPMG, De Meern (NL);
- Erik Daems, Baker & McKenzie, Brussels (B);
- Filip De Corte, Janssen Pharmaceutica NV, Beerse (B);
- Hans Donker, IBM, Uithoorn (NL);
- Mark J. de Fouw, Draka Fibre Technology, Eindhoven (NL);
- Dik van Harte, BIE, Rijswijk (NL);
- Daan van der Heyden, PamGene, 's-Hertogenbosch (NL);
- Harmen Jousma, Leiden University, Leiden (NL);
- Frank G.F. Landolt, Devgen N.V., Gent-Zwijnaarde (B);
- Lydia A.G.M. van Leeuwen, Avery Dennison Materials Nederland B.V., Leiden (NL);
- Remco van Leeuwen, Van Doorne, Amsterdam (NL);
- Harrie A.M. Marsman, Verenigde, 's-Hertogenbosch (NL);
- Henk S. Sipma, Janssen Pharmaceutica NV, Beerse (B);
- Annemie M. Swinnen, Huntsman Specialty Chemicals, Eversberg (B);
- W.A. de Veen, KPMG, Amsterdam (NL)

### Membership of LES Benelux

LES Benelux is one of the fast growing societies within LES. For more information about membership, please e-mail to [membership@benelux.les-europe.org](mailto:membership@benelux.les-europe.org) and an information package will arrive within a few days. Information can also be found [www.les-europe.org/benelux](http://www.les-europe.org/benelux).

### Upcoming LES Conferences

#### 2001 LES International Annual Conference

*Cape Town, South Africa, 27 April-2 May 2001*

For more information please visit [www.licensing.co.za](http://www.licensing.co.za) or contact [alewis@adams@adamsadams.co.za](mailto:alewis@adams@adamsadams.co.za).

#### 2001 LES Pan European Conference

*St. Petersburg, Russia, 15-18 September 2001*

For more information, please contact Valery Medvedev, e-mail [pat@Gorodissky.ru](mailto:pat@Gorodissky.ru).

#### 2001 LES USA and Canada Annual Meeting

*Palm Desert, USA, 28 October – 3 November*

Information and registration please e-mail [info@les.org](mailto:info@les.org) or visit [www.usa-canada.les.org](http://www.usa-canada.les.org).

#### 2001 LES Pan American Conference

*São Paulo, Brazil, 6 and 7 December 2001*

For more information and registration, please e-mail to [abpi@abpi.org.br](mailto:abpi@abpi.org.br).

### Next Newsletter

For the June 2001 issue of this Newsletter insertions must be received by 15 May 2001.

Please send your contribution to [info@benelux.les-europe.org](mailto:info@benelux.les-europe.org)