

Workshop

Lurking Legal Traps Awaiting Tech Transfer Negotiators

Level**Intermediate****Duration****1 day** – 8.30am to 5.00pm.**Program**

A detailed description of the workshop program is below.

How this workshop helps tech transfer professionals

This workshop was designed and developed in collaboration with a large tech transfer office of a university.

The catalyst for the development of this workshop was the TTO's assessment that its staff engaged in negotiating tech transfer transactions were better equipped to do so when they had knowledge of aspects of the contractual legal environment in which the negotiation was conducted.

Its TTO staff needed this legal knowledge to be equipped to deal more effectively with some of the legal implications of what they encountered.

A tech transfer negotiator must be multi skilled. The negotiator must have communication skills, analytical skills, persuasiveness, and knowledge of human behaviour.

No less must the negotiator have knowledge of those laws which impact upon what and how the negotiator will negotiate. This workshop is about those laws.

Legal implications and potential liabilities do not start when the drafting of a tech transfer agreement commences.

They start when the negotiation starts, and sometimes earlier, when seeking potential commercial partners.

In this workshop we look at numerous tech transfer case studies, and at the laws impacting upon tech transfer negotiators.

Customisation

The content of this workshop can be changed and customised to enable specific learning objectives to be achieved.

Presenter

Philip Mendes

Delivery style

Interactive workshop style.

Emphasis on discussion, participants asking questions, contributing their comments, and sharing their experiences. We find that this interactive workshop style keeps participants alert, and achieves a more effective learning and skills building outcome.

Materials

Each participant receives a set of bound workshop materials which will be an ongoing reference resource.

Certificate of Completion

A Certificate of Completion is provided to each participant.

LURKING LEGAL TRAPS AWAITING TECH TRANSFER NEGOTIATORS

8.30	Welcome and Introduction	Overview of the day.
9.00	To What Extent Can you disclose without a Confidentiality Agreement	How far can you go in making disclosures of confidential information with no Confidentiality Agreement, without prejudicing patentability, and without prejudicing your commercial interests.
	An agreement to agree is not an agreement	Sometimes we may want to defer negotiating an issue because we recognise that the best time to properly negotiate it is at a later time when the parties are better informed. Can you do this and still have a binding agreement? Recognising and avoiding an agreement to agree. Proper mechanisms to defer the negotiation and still have binding agreement. Case studies.
	Is an obligation to negotiate in an option to license or right of first refusal valid?	These are binding obligations in US, Europe and China. Can you be liable in those countries even if you are located outside those countries? Are obligations to negotiate legally binding?
11.00	Morning Tea	
11.30	Do you have a duty of disclosure to the other party	You know something that the other party does not know, which may affect its attitude or decision making. Do you have to disclose it? Even if it is contrary to your own interests? Are there consequences if you don't? Case studies.
	The risk of misrepresentation	You don't have to intend to mislead for there to be a liability. How misrepresentations can arise, even unintentionally. Consequences of misrepresentation. How to manage and reduce the risk of misrepresentation. Case studies.
	Unintended side oral agreements	Usually you don't intend to be bound until the contract is signed. But along the way to getting there, you might have agreed to something orally, and you're bound by it. Recognising and avoiding unintended side oral agreements. Case studies.
1.00	Lunch (in KL only: lunch will be from 1.00pm to 2.30pm – and the remaining times below will be extended by 30 minutes)	
2.00	Binding and Non-Binding Term Sheets	A Term Sheet is not normally intended to be legally binding. What if the other party wants it to be? Implications of doing so. Making sure that you're not bound earlier than you want to be. Case studies.
	Avoiding a proposal being legally binding	A Proposal is not usually thought of as being something that could become binding. Its only the first step after all. But, it can be. Implications. Avoiding a Proposal becoming binding. Case studies.
	Certainty and Precision in what you agree	The outcome of a negotiation – what is agreed – needs to have precision. The lack of precision means that the parties are not bound. How to recognise when you have achieved the necessary level of precision, and when you have fallen short. Case studies.
3.00	Afternoon Tea	
3.30	Legal Terminology used by Negotiators and what they mean	“Consent not to be unreasonably withheld” “Good faith” “Acting reasonably” “Best endeavors” “Material” etc. These are terms often used. What do they legally mean? Are they meaningless? The implications of employing them? Case studies.
	What non-lawyers need to know about negotiating risk allocatin	Risk allocation refers to where risk will lie: in a license agreement, whether with the licensor or the licensee; in a research agreement, whether with the party undertaking the research, or the party funding the research. Risk can be allocated differently in relation to different issues in an agreement. How risk is customarily allocated in license agreements and research agreements Those that negotiate tech transfer transactions need to understand legal terminology employed, and understand risk allocation best practice. Case studies.
5.00	Close	