

the MANITOBAN

Seeds of Change unsown

Does copyright legality or the suppression of academic freedom prevent the release of documentary on GMOs?

Tessa Vanderhart Staff



McLachlan (left) and Mauro (right) question whether the release of their video is being compromised by Monsanto's move into Smartpark.

Photo by David Lipnowski

Despite its name, a video called "Seeds of Change" will not have the impact on the biotechnology world its creators intended — at least, not anytime soon.

The documentary, by University of Manitoba PhD candidate Ian Mauro and Professor Stéphane McLachlan, has sown controversy in what was one of biotechnology's most contentious fields, in an attempt to get at the truth about genetically modified canola.

Now, three years after its completion, the video still cannot be shown. And while the video is controversial on a number of levels, the project's viability may ultimately depend upon the prickly position in which it places the University of Manitoba.

The medium of change

To film "Seeds of Change," Mauro and McLachlan travelled rural Manitoba and asked farmers for their

thoughts on genetically modified canola. Eventually, they synthesized these accounts into documentary form. The research, originally intended to constitute part of Mauro's PhD, is controversial mostly because of its approach: Mauro uses the medium of video to document the experiences of farmers, something that has never been done before.

The documentary is based on the experiences of farmers, rather than approaching the research from a purely academic basis.

"Ironically, going to farmers and asking them 'what's up?' is incredibly controversial – because some of the stories farmers have, and some of the experiences farmers have had, are irrefutable in their truth; it's straight from the land. Hearing the stories and hearing those experiences – either good or bad – resonates in a way that science can't match; numbers on a sheet pale in comparison to the power and emotional response people have to a farmer telling a story about what's happened to them," said Mauro.

However, said McLachlan, "perhaps it's too powerful." Upon seeing the film for the first time, the university balked and decided that it could not be responsible for insuring the video.

The university has an enormous interest in the content of the film; not only was canola originally developed at the University of Manitoba, but a substantial amount of research into genetically modified canola is ongoing at the institution.

Both researchers said that the documentary is unbiased and reinforced by peer-reviewed literature, and no one denies that the film is objective.

The video, according to the filmmakers, does not fall victim to either the radical, anti-genetically modified organism (GMO) activism or corporate concerns that so plague the issue of genetic modification; instead, it leaves the viewer to draw conclusions.

Nevertheless, the video has the potential to make an enormous — albeit diminished with time — contribution to the discourse on biotechnology, and agriculture in general.

Mauro said that it is one of the first, if not the first, publicly funded risk analyses of genetically modified crops in Canada, and as such, it is "inherently controversial: the vast majority of risk research conducted of genetically modified crops has some element of private funding associated with it."

Joanne Keselman, vice-president (research), said that the university was not concerned with limiting the distribution of the video, but rather with issues of intellectual property. Specifically, the university, which has a 50 per cent stake in the raw footage used in the documentary, has every right — and, in fact, is mandated — to protect the rights of farmers who express their opinions in the video.

Keselman emphasized that the documentary was created independently of the university, but the footage was originally collected as part of Mauro's graduate research, so the university maintains a legal interest in it, and technically has copyright ownership of half of the footage used in the documentary. This right is unalienable without consent from one part-owner or the other — in this case, the university or McLachlan.

Without owning the rights to the raw footage of farmers used in the video, it can't be distributed commercially; without clearance from the university, it can't be shown for educational purposes.

This copyright bylaw is intended to protect educational videos and other such new media resources from being used for commercial resale. The bylaw cannot be changed without a new collective bargaining agreement with the University of Manitoba Faculty Association — and the current one won't expire until 2007.

"If [Dr. McLachlan] and I wrote a book, or painted a picture about GMO's and farmers, the university would have no say in how we distribute that information," said Mauro. "The whole situation is preposterous."

Keselman maintains that the only remaining constraints on the documentary are legal.

"We have no issue with the content of the video, we have no interest in the video itself — our issue is making sure that we are conducting our research activities in accordance with the highest ethical principles and standards," she said.

Keselman emphasized that there are two, and only two, conditions that must be fulfilled before the documentary can be used non-commercially. The first: a disclaimer, stating that the opinions presented in the video are not representative of the university in any way. While both researchers have no contention with this condition, they said that the way it is presented might have meanings more difficult to agree to than hinted at in the legal discourse.

The second of the provisions requires expressly written permission to use the raw footage from all of the farmers interviewed in the project.

Mauro said that it has already been done — but Keselman said that the university has no documented evidence that this permission was obtained, which continues to obscure the project.

Global biotechnology

The content of the video is, however, in high demand. Mauro said that people across the world are clamouring to see the video, including farmers from Canada, the United States and Argentina, where genetically modified products have been commercialized. At a conference in Alberta, Mauro was impugned by a plant biologist, but McLachlan said that farmers 'booed' the scientist, asking Mauro to come to their counties and show the video.

Rene Von Acker is a professor in the faculty of agriculture who has conducted some heady research into genetically modified crops, specifically trans-gene escape, when genetically modified canola inadvertently grows in a farmer's field. But, he noted, his research has mostly stayed under the radar, despite having enormous ramifications on the biotech world, even outraging the Canadian Wheat Board.

Von Acker said that he continues to be funded by industry, since his research "help[s] big business," and, for the most part, private investors recognize the importance of supporting diverse and real research. He worries his colleagues at Agriculture Canada are less free to disseminate the negative results of biotechnology than tenured academics — which is why universities are supposed to publish research that has the potential to be unpopular with big businesses.

"Do you want a university? That's what universities do," said Von Acker, "Academic freedoms serve a purpose."

He's concerned that, by preventing the distribution of the video, the university is, inadvertently, doing the agricultural community a great disservice by limiting discussion, and not answering the questions that farmers need answered.

Anne Clark, a professor of genetics at the University of Guelph, is concerned about the future of academia, as a generation of students "who are only interested in one side" come into the foreground of research on highly contentious subjects such as this. "The source of the funding predetermines the outcome of the research; it limits the number of questions you can ask. Monsanto is not interested in looking at all of the bad effects.

"Farmers are getting smart on this, and they're realizing that there's more to the story. They have resisted the release of genetically modified wheat because it will have adverse effects for them, just as genetically modified canola has," she said.

One of the primary concerns in the agricultural community is the potential for genetically modified canola to contaminate fields. This devalues Canadian canola, and presupposes that the canola oil that comes from genetically modified crops is safe for human consumption, which has not been supported by testing. Clark said that genetically modified crops should be considered "unsafe until proven otherwise."

Since the video was prepared, Canadian farmers have successfully blocked the sale of Roundup Ready wheat, which — as demonstrated by Von Acker's research — would likely grow voluntarily, just like Monsanto's herbicide resistant canola, if widely used.

Monsanto and U

The recent announcement that Monsanto is going to locate its national headquarters in the university's Smartpark may also be deeply embroiled in the controversy. Smartpark is the area on campus where industry and the university collaborate on research.

Mauro is keen to know the details of the agreement between the university and Monsanto.

"It certainly doesn't help the university's image to be as closely associated with Monsanto, given their actions against us — and that's certainly why this is so controversial," said Mauro.

"We don't know to what extent that private-public partnership has affected our ability to disseminate our publicly-funded research. It's certainly a troublesome connection, and it's a troublesome series of events, that certainly calls into question these types of relationships, the presence of corporations on campus, and the long-term effects that has on public knowledge production, and the public good as a whole," said Mauro.

Despite these types of allegations, there is no established link between the legal confusion precluding the release of "Seeds of Change" and the decision to relocate Monsanto's corporate headquarters to the university's Smartpark.

Moreover, there is little threat that Monsanto will sue; not only has the company not seen the film, said Trish Jordan, communications representative for Monsanto, but the biotech giant was barely aware that it existed until the situation became publicized in the Winnipeg Free Press.

"I have absolutely no understanding of what is included in the video — we don't have a history of pursuing these sorts of things," said Jordan.

Jordan added that Monsanto does not currently sponsor any research at the University of Manitoba, although the company may consider collaboration when it takes up residence on campus in November.

Mauro said that Monsanto was asked to participate in the documentary, but declined — a fact mentioned along with the anti-Monsanto opinions in the film. However, libel laws stipulate that simply including a defamatory statement in public media — even if it is not endorsed — can be the basis for a lawsuit.

The Canadian University Reciprocal Insurance Exchange (CURIE), a collaborative insuring body for universities, found that the video could be insured, but a single lawsuit would result in the utter collapse of the university's insurance.

Academic freedoms don't just grow on trees

Furthermore, it's not only the farmers — who in part have already decided for themselves the future of genetically modified canola in Canada — who have a stake in the content of the video. By limiting the rights of researchers to distribute a scientific document, however innocuously, the debate over this video is headed in a dangerous direction.

"I don't think this is a debate of academic freedom at all, or the ability to disseminate findings," said Keselman. The administration of the university holds that the notion of academic freedoms is "disingenuous" with this incident, reaffirming that the debate is about the treatment of the intellectual property and not the content of the video.

According to James Turk, executive director of the Canadian Association of University Teachers, the stakes are much higher than even canola prices. He likened this case to the Oliveri scandal at the University of Toronto in 1999, saying that the academic freedoms of all researchers are being contested herein.

The Oliveri case involved Apotex, the drug conglomerate, which is also sponsoring the construction of a new Pharmacy building at the Bannatyne campus of the U of M. Nancy Oliveri, a haematologist, was not supported by the U of T or by the Hospital for Sick Children, where she conducted her research. She was threatened that she would be sued if she revealed research showing that one of its drugs was detrimental to the livers of children taking it. Eventually, she sued Apotex for libeling her, and they returned the favour, accusing her of slander; neither case has yet been resolved, although Oliveri is now supported by both institutions in her legal battles.

Arthur Schafer, who heads the Centre for Professional and Applied Ethics at the University of Manitoba, said that he is not surprised by what has happened. He found parallels between this controversy and numerous other infringements of academic freedoms. He also raised concerns over the university's decision to collaborate with Apotex, who he said is "internationally notorious" for suing Nancy Oliveri.

"Research on climate change is funded by the petrochemical industry; research on new drugs is funded by the pharmaceutical industry. And it's not just the research: it's the very fabric of the university. In this respect, the U of M is conforming to a pattern which has called into question the integrity of research, and universities themselves," said Schafer.

According to Schafer, the success of research depends on partnerships with corporations; much governmental sponsorship is available only to researchers who can attract corporate sponsors. He likened the situation to riding two horses at once — and noted that the university is vulnerable to being pulled in two very different directions.

“That this video should not be viewed, that it should not be able to be shared . . . seems to contradict the university’s commitment to truth, and to debate. You would think the university would be fighting on behalf of its researchers, to make their work public,” he said.

It is legitimate for the university to protect itself against potentially ruinous defamation suits; but, since the university has not given up the rights to the video, larger questions arise about its true intentions.”

“Good ethics require good facts”, and Schafer admits that he doesn’t know all of the answers.

Negotiating change

Since June, when negotiations between the researchers and the university broke down, there has been no communication between the administration and Mauro and McLachlan. Instead, both sides have come to rely on growing media attention. And both sides have voiced concerns about the veracity of media reports. McLachlan and Mauro point out utter contradictions in what the university administration has said to them and to the media, adding that the resolution of the conflict will require more than just the dean of the faculty of environment’s signature.

Keselman and John Danakas, the university’s director of Public Affairs, are more concerned about biases in the media. Keselman said that the video could be shown publicly at any time, with the Dean’s permission — and with the fulfillment of the university’s two conditions.

Keselman, however, is not worried about the prospects for reconciliation of the dispute.

“Honestly, I genuinely can say that I think the university has been amicable throughout, and has been ultimately responsive and diligent in dealing with this matter. And it’s interesting, I think that even the faculty member and graduate students themselves have indicated that we’ve been working in good faith,” said Keselman.

Meanwhile, Mauro is less optimistic that good faith will preside.

The contracts presented, according to Mauro, would even require both himself and McLachlan to pay the university if the video was sued.

“They wanted us to indemnify the university, so basically if there was a lawsuit, we would take responsibility for any kind of court costs, and we said no way. So, we spent a lot of time coming up with this insurance policy, and then they changed their tune again,” said McLachlan. “If you look at it chronologically over the three years, it’s exactly the opposite: it’s us, always, desperately trying to come up with solutions . . . that will allow us to put out the video.”

“[The conditions outlined in the document] really restrict our ability to talk about the video, to associate with the university when we talk about the video; it restricts our ability to deliver and distribute the video through the university website. It certainly means that if any revenue comes out, we have to pay back the

university," said McLachlan.

Of course, it must be noted that none of this is mentioned in the university's bylaws regarding the copyright of recordings, but rather in the contracts provided to McLachlan delineating the conditions that must be met to distribute the film for educational purposes.

In the end...

At the end of "Seeds of Change," farmers are shown the partially completed video, and asked what they think of it. The results of this survey are unambiguously positive.

Mauro has no more questions for the university — having asked them all — but said that he wants the university to make public the details of its agreement with Monsanto. Yet many questions remain. What is to be done with the raw footage? Should the university transfer ownership, or can the dispute be reconciled for academic distribution? From a research perspective, questions abound regarding the affects the video would have: the testimonial of farmers on genetically modified crops is undoubtedly a powerful tool for sorting through this highly contentious subject. And, of course, the most pressing question: when, and under what circumstances will the documentary finally be released?

Finding answers to these questions will take time — time the researchers say continues to diminish the relevance of the video.