



## **Making intellectual property work for developing countries**

*Prepared by the Commission on Intellectual Property*

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Throughout history and in all cultures and traditions, people have developed new inventions and creations which are valuable for society. These have often been protected by rites and rituals or laws and customs. The concept of intellectual property is therefore not a new one and seeds for its protection exist in many cultures in countries at all stages of development.

Intellectual property should therefore not be seen as an issue which divides developed and developing countries. Innovation and creativity are fundamental to all cultures and traditions, and are drivers of progress in most societies. All countries have the potential to develop their intellectual property assets, and to reap benefits from them for their people.

The ability to manage and exploit innovation and resultant intellectual property rights is key to success in today's world in which intellectual, rather than physical, assets are one of the primary sources of wealth and competitive advantage. Recognition and protection of intellectual property assets are therefore necessary preconditions for development today. The World Economic Forum Global Competitiveness Report, for example, indicates a correlation between the protection of intellectual property rights and national competitiveness. The 20 countries which were perceived as having the most stringent intellectual property protection were classed among the top 27 in the WEF's growth competitiveness index. Conversely, the 20 countries perceived as having the weakest intellectual property regimes were ranked among the bottom 36 for growth and competitiveness.<sup>1</sup>

### **Use of intellectual property in developing countries**

There is encouraging evidence that many developing countries recognize this and are increasingly using the protection of intellectual property to grow and expand local innovation-based industries.

In Brazil, for example, statistics from the national industrial property office (Instituto Nacional da Propriedade Industrial - INPI)<sup>2</sup> show that in 2002, 33.5% of applications for patents, utility models and certificates of addition were filed by Brazilian residents. This figure rises to nearly 42% when design registration applications are included. INPI and WIPO statistics on the Patent Cooperation Treaty<sup>3</sup> also show a steady increase in national applications from Brazilian residents for the five year period up to 2002, and in PCT applications originating in Brazil between 1990 and 2004. An average of 90,000 trademark applications are filed per year in Brazil of which about 80% are made by domestic applicants.

<sup>1</sup> World Economic Forum, *Global Competitiveness Report 2004-5*

<sup>2</sup> <http://www.inpi.gov.br>

<sup>3</sup> [http://www.wipo.int/ipstats/en/statistics/patents/pdf/yearly\\_report\\_2004.pdf](http://www.wipo.int/ipstats/en/statistics/patents/pdf/yearly_report_2004.pdf)

The Inter-Ministerial Committee against Piracy set up in 2001 to coordinate anti-piracy strategies throughout Brazil to protect works of local and foreign artists and producers, and other Brazilian governmental and parliamentary initiatives, also attests to the importance placed by the Brazilian government on strong intellectual property enforcement within Brazil<sup>4</sup>. Another interesting initiative is Brazil's recent "Innovation Law"<sup>5</sup> which facilitates linkages between researchers in universities and private companies with the aim of developing new technologies.

According to the China State Council's White Paper on intellectual property developments in China of April 2005<sup>6</sup>, applications in China for the three kinds of patents under Chinese law - for inventions, utility models and designs - doubled from 1 million to 2 million between 2000 -2004. In 2004, 78.8% of these were domestic applications, and 79.5% of approved applications were from within China. It is interesting to note that while between 1985 and 1993 only 18% of applications of patents for inventions were domestic in origin, this percentage had risen to 50.6% in 2004, overtaking foreign applications. In the area of trademarks, 82% of trademark registrations were domestic in origin in 2004.

Countries dependent on commodity exports are also harnessing the intellectual property system to add value to their products in export markets. Colombian coffee growers have created the Colombian coffee trademark which is well-known internationally as representing high quality Colombian coffee and allows Colombian coffee growers to command premium prices for what was previously a commodity product. The Ethiopian government is also trying to use intellectual property techniques to increase export trade revenue and ensure that a larger part of the intangible value of premium Ethiopian coffee is captured by its growers<sup>7</sup>. In Ghana, a cooperative of cocoa growers partly own the company that produces, brands and markets the final chocolate products in the UK. This model has allowed the growers to share in the profits derived from the commercial value of the brand and trade dress of the final retail product<sup>8</sup>.

Local cultural industries, which are vibrant in many developing countries with strong traditions in music, films or literature, are heavily dependent on copyright protection, particularly because of the use of new technologies to distribute their works and their consequent vulnerability to piracy. In India, for example, copyright industries already accounted for 5.06% of GDP in 1995 and its book publishing, film and music industries turned out 57,000 book titles, roughly 800 films and nearly 412 million units of music in 1997<sup>9</sup>. Today, the Indian IT industry continues to chart double-digit growth with expected revenues of 28 billion in 2004 - 5<sup>10</sup>. Economic studies have noted that countries which have recently strengthened protection and enforcement of copyright have seen a marked increase in the contribution to GDP from the copyright industries, indicating that copyright protection enhances economic growth and helps attract FDI, in addition to stimulating cultural diversity<sup>11</sup>.

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<sup>4</sup> WTO Trade Policy Review Of Brazil, Report By Brazil Dated November 1, 2004, WTO Document WT/TPR/G/140

<sup>5</sup> Law Nr. 10,973 of December 2, 2004.

<sup>6</sup> "New Progress in China's Protection of Intellectual Property Rights" at [http://news.xinhuanet.com/english/2005-04/19/content\\_2849786.htm](http://news.xinhuanet.com/english/2005-04/19/content_2849786.htm)

<sup>7</sup> Technical advice being provided by Light Years IP <http://www.lightyearsip.net/index.htm>

<sup>8</sup> <http://www.divinechocolate.com/Homepage.asp?NodeID=89706>

<sup>9</sup> Shahid Alikhan, *Socio-Economic Benefits of Intellectual Property Protection in Developing Countries* (2000)

<sup>10</sup> National Association of Software and Service Companies (NASSCOM)

<sup>11</sup> International Intellectual Property Alliance, *Initial Survey of the Contribution of the Copyright Industries of Economic Development* (April 2005)

at [http://www.iipa.com/pdf/2005\\_Apr27\\_Economic\\_Development\\_Survey.pdf](http://www.iipa.com/pdf/2005_Apr27_Economic_Development_Survey.pdf)

## Strategic use of Intellectual property in national economic policy

Several governments have systematically used intellectual property policy as a key tool in their overall strategies to achieve their economic development goals.

During the four decades after the Korean War, the Republic of Korea successfully transformed itself from a poor agrarian economy with a per capita income of less than US\$100 into a highly industrialised country with a per capita income of US\$12,000 and internationally recognized brands and technologies. It did this through a systematic economic and trade development policy, including heavy investment in capacity building, human resource development, incentives for technological innovation and the development of domestic intellectual property assets<sup>12</sup>.

According to a recent study by the Korea Development Institute, technological progress was one of the most important sources of national income growth between 1963 and 2000. The intellectual property system evolved in tandem with technological innovation and infrastructure during this period, helping to promote an inventive culture in the initial years of Korea's economic development, when technology level was low. As Korea moved from labour-intensive to capital intensive production in the 1970s, the intellectual property system provided a stable environment for facilitating technology transfer and FDI, and encouraged the beginnings of local R&D in simple technologies through the protection of utility models and small inventions. In the next phase, the intellectual property system was an important catalyst for the development of indigenous technology by Korean companies, several of which have become global market leaders.<sup>13</sup>

The success of its strategy in developing domestic intellectual property assets is reflected by the fact that Korea is now the fourth largest producers of industrial property rights in the world and has seen a notable increase in domestic patent applications (51.3% in 1992 to 75.6% in 2004) and trademark applications (73.5% in 1992 to 84.8% in 2004). The huge increase of the overall level of patent, trademark and industrial design applications between the 1960 and 1999 - including an 131-fold increase in patent applications, a 72-fold increase in trademark applications and a 98-fold increase in industrial design applications - also indicates a positive evolution in the willingness of both domestic and foreign intellectual property owners to develop and market their intellectual property assets in Korea.

Singapore has put into place a strategy - coordinated across different government departments - to build it into an intellectual property hub, conducive to the creation, ownership, exploitation and management of intellectual assets<sup>14</sup>. This involves not only training in intellectual property protection, exploitation and management, but also helping local SMEs audit their intellectual property assets and develop intellectual property management strategies<sup>15</sup>.

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<sup>12</sup> Chulsu Kim, *Integrating Intellectual Property into the National Development Policy: the Korean Experience*, keynote address at WIPO/KIPO Ministerial Conference on Intellectual Property for Least Developed Countries, Seoul, 25 October 2004

<sup>13</sup> *ibid*

<sup>14</sup> Speech by Ho Peng Kee, Senior Minister of State for Law and Home Affairs, 11 September 2002

<sup>15</sup> <http://www.iesingapore.gov.sg/events/index.jsp?vert=BZ&secfield=2&catfield=42&subfield=204>;  
<http://www.ipos.gov.sg/main/indexpage/index.html>

The number of patents granted to Singaporeans grew from 20 to 400 between 1995 and 2004 with a notable increase between 2001 (when the Intellectual Property Office of Singapore was established) and 2004. Among the top ten filers of design applications in 2004 were three Singaporean companies, and Singaporean brands, artists and filmmakers are having increasing success in overseas markets. Licensing revenue from patents and new technologies developed in Singapore increased from Sing\$55.17million to Sing\$132.37 million between 2001 -2003, and Singapore is currently Asia's top location for legal CD and DVD content replication<sup>16</sup>.

Cuba has also used the patent system in its strategy to develop its highly successful biotechnology industry, which was reported in 2000 to be one of the country's largest export earners with annual sales as high as US\$290 million, and employing 34,000 people. Cuba is reported to have international patents on 66 pharmaceuticals<sup>17</sup>.

Governments in developing countries such as South Africa are increasingly contributing significant capital to the development of industries dependent on effective copyright protection. For example, the South African government owned Industrial Development Corporation (IDC) - which contributes to economic growth, industrial development and economic empowerment through its financing activities - has been active in the media and motion picture sector, where it has invested SAR500 Million in motion picture projects that can show sustainable commercial viability. Such sustainable commercial viability would not be possible without copyright protection. In addition, the South African government has introduced a Large Budget Film and Television Production Rebate Scheme, under the auspices of the Department of Trade and Industry (the dti) that will refund local movie-makers 25% and foreign movie-makers 15% of their investment in film production in South Africa<sup>18</sup>. This policy of investment in copyright-based industries recognises the long term value in contributing to innovative local industries and cultural diversity.

## **WIPO Development Agenda**

The Friends of Development group of countries has stated that it "*attach(es) importance to the role of intellectual property in the path towards development*" and that the "*Development Agenda*" initiative recognizes that intellectual property is relevant to the process of building technological capacity<sup>19</sup>."

ICC therefore believes that the main question which should be addressed by WIPO and its member states in their discussions concerning a possible Development Agenda for WIPO is how to translate the intellectual property systems already in place in most countries into concrete benefits for their people.

ICC suggests that these discussions should focus on identifying specific measures which governments should take for their countries to benefit concretely from the intellectual property system, and on how WIPO can best help them to do this.

To have sufficient information for this exercise, WIPO and national governments would benefit from feedback on what measures local communities, businesses, innovators and creators need to help them develop and exploit their intellectual property assets to their and their countries' benefit.

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<sup>16</sup> Speech by Liew Woon Yin, Director General, Intellectual Property Office of Singapore, 10 March 2005

<sup>17</sup> Kamil Idris, *Intellectual Property: a Power Tool for Economic Growth*

<sup>18</sup> <http://www.sagoodnews.co.za/search/culture/435960.htm>;

<http://www.tradeinvestsa.co.za/Incentives/index.shtml>

<sup>19</sup> Proposal to Establish a Development Agenda for WIPO: An Elaboration of Issues raised in Document WO/GA/31/11 (6 April 2005) doc no IIM/1/4, page 3 and 4.

ICC would like to contribute constructively to this process by offering to conduct, jointly with WIPO, a survey to ascertain what potential local users of the intellectual property system in developing countries need to help them develop and exploit their intellectual property assets and access and use the intellectual property system. We believe that ICC - with its large network of small and large organisations from all sectors in over 130 countries and its national committees active in 90 countries - is well-placed to assist WIPO in such an exercise, which it hopes will bring useful guidance to WIPO's work in helping developing countries benefit from the intellectual property system.

### **Suggested measures to help local communities and businesses better benefit from the intellectual property system**

While intellectual property protection is a necessary pre-condition of development in today's world, such protection has to be supported by other appropriate policies and a deep commitment by governments to establish an effective infrastructure to process and make use of intellectual property rights. Without positive action by individual governments, the intellectual property system will not fulfil its potential as a tool for development, growth and progress.

Pending feedback from the survey suggested above, ICC would like to make the following suggestions for measures which governments could take to better reap the benefits of the intellectual property protection system.

In addition to providing clear and enforceable intellectual property rights ownership, without discrimination as to nationality, these suggested measures include:

- improving the accessibility of the national and international intellectual property protection systems in terms of costs and ease of use;
- ensuring that intellectual property institutions are efficient and sufficiently funded;
- supporting intellectual property policies with sound economic management, good infrastructure and other appropriate policies in areas such as education, science and technology, culture, taxes, investment regulations, production and technical incentives, trade, and competition;
- establishing an active and coherent intellectual property policy coordinated throughout government bodies;
- educating local communities, businesses and the public on the potential benefits of the intellectual property system;
- providing assistance to innovators/producers/creators on how to use intellectual property protection to their commercial advantage and supporting efforts of stakeholder organisations in this area;
- bridging the gap between academic and research institutions, and businesses and financing sources; and
- making it a priority to strengthen and/or create a legal framework to ensure implementation and effective enforcement measures against intellectual property theft. There is also a need for clearly designated and sufficiently resourced enforcement institutions, supported by training, international cooperation and public education.

Several of Mexico's proposals – such as those to further develop an open, rule-based, predictable and non-discriminatory trading and financial system including the commitment to good governance of public affairs and poverty reduction; to develop and implement strategies for decent and productive work for youth; to make available the benefits of new technologies; and to disseminate information to society as a whole about the benefits of the intellectual property system - would contribute to attaining these goals.<sup>20</sup>

The Kingdom of Bahrain's proposals to set up national strategies on intellectual property and to provide advice and assistance to SMEs and research and cultural sectors in negotiating licences, commercializing and finding markets for their creations and innovations would also be very helpful in achieving some of the above objectives<sup>21</sup>.

Many of WIPO's current activities already work towards the above aims. These include its efforts to support and provide training in national patent and trademark offices, its ongoing work with SMEs and its recent symposium on Intellectual Property, Education and Research.

ICC hopes that the above submissions make a useful contribution to the discussions in WIPO on the important question of the role of the intellectual property system in development.

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<sup>20</sup> Proposal by Mexico on Intellectual Property and Development (1 April 2005) Doc IIM/1/3

<sup>21</sup> Proposal by the Kingdom of Bahrain on the Importance of Intellectual Property in Social and Economic Development and National Development Programs (14 June 2005) Doc IIM/2/2