

The Wrong Song

Key Report Sends Developing Countries a Distorted Message on IP Rights

BY BRUCE LEHMAN

As the United States and the rest of the developed world well know, intellectual capital is a primary engine for growth. Effective use of that capital—developing it, exploiting it, and protecting it—is an economic necessity. That’s where the intellectual property system comes in. The IP system has long been used by developed countries to encourage the growth and use of intellectual capital.

Points of View

In much of the world outside North America and Europe, however, IP systems are inadequate—often seriously inadequate. As a result, the developing world has been losing out for years. It’s in the economic interest of both the developed and the developing world to build up those systems. Unfortunately, a recent report from a British government commission urges a giant step in the wrong direction.

The Commission on Intellectual Property Rights (CIPR) was established by the United Kingdom’s Department for International Development for the purpose of investigating how intellectual property could be used to benefit developing countries. It included individuals from Great Britain, India, and Argentina and was chaired by an American, Stanford law professor John Barton. On Sept. 12, it released a report entitled “Integrating Intellectual Property Rights and Development Policy.”

The CIPR report has generated a lot of buzz. Instead of suggesting ways that developing countries could take better advantage of the intellectual property system, the report makes the argument that strong IP protections are not in the interests of developing countries. It suggests that the efforts under the Agreement on Trade Related Aspects of Intellectual Property (TRIPS) to bring developing countries into compliance with the international IP system have been misguided and should be reconsidered in critical ways.

Earlier this year I was interviewed by the CIPR. At the time, I thought that the commission’s work was the beginning of a coordinated British effort to take seriously its responsibilities under Article 67 of the TRIPS Agreement. Article 67 obligates

developed countries to provide the technical assistance necessary for developing countries to build functioning IP systems. Developing countries themselves called for Article 67 during the Uruguay Round to ensure that their inventors and artists would benefit from TRIPS.

Now, this UK effort strays far from the constructive engagement promised under Article 67. Countries that move to adopt its

recommendations will do themselves more harm than good.

MONEY MATTERS

Indeed, the CIPR report could have a serious impact on the economic strategies of developing countries. With the imprimatur of the UK’s international aid agency, the report will likely be used by many developing countries as a policy guide. This is



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a frightening thought, since the report implicitly encourages the reversal of hard-fought IP reforms that many developing countries have thus far made. If developing countries proceed to dismantle what little intellectual property infrastructure they might have, they will experience a devastating setback in achieving their economic goals.

A well-functioning IP system takes a country's intellectual capital—that is, its cumulative scientific, technical, and cultural knowledge—and channels it into economically productive uses. But to reap the benefits their citizens deserve, developing countries need help and encouragement. They need technical assistance in implementing this admittedly complex system. And they need to understand that entering the IP system is in their best interests.

From the initiatives that the International Intellectual Property Institute pursues around the world—projects aimed at improving the ability of developing countries to make use of the international IP system—I've learned firsthand how inadequate skill sets and intellectual property infrastructure can undermine the economies of the developing world. Consider the case of Jamaica.

With a 3.5 percent share of the global music market, Jamaican composers and performers account for about \$385 million of the royalties received by European, American, and Asian copyright royalty collecting societies. Yet none of that money finds its way back to Jamaica's own collecting societies because their artists and collecting societies lack the required expertise in international licensing laws. With adequate technical assistance, Jamaican artists would receive their proper share of global copyright revenue. And the result would be at least a 3 percent rise in Jamaica's gross domestic product.

GROWING IDEAS

Another example is Brazil, a country that devotes significant tax revenue to financing scientific research and development, which in turn produces a wealth of scientific knowledge with commercial potential. Brazil, however, lacks both an effective patent system and sufficient local experts knowledgeable in how to obtain, enforce, and license rights in important markets such as the United States and Europe.

As was recently reported in *The Washington Post*, Brazilian scientists at the University of São Paulo were successful in decoding the genome of a grape-killing pest that had threatened California's \$2.7 billion wine industry. California vintners wel-

comed the discovery and persuaded the U.S. and state departments of agriculture to support the Brazilian research. Unfortunately, the funding agreement with the University of São Paulo provided that there would be no patents on this research. The result: Brazilian science will get nothing except good press, when it might otherwise have been compensated by the very markets that could and should have paid for its discoveries.

If the University of São Paulo were located in the United States, the outcome might have been very different. In the United States, research conducted at universities funded by government dollars is automatically reviewed for patenting. If the research had taken place, for example, at the University of California, the innovations would have been patented and the resulting royalties would have been added to the \$250 million a year in patent licensing income the university already receives. With technical assistance in designing and implementing a comparable IP mechanism, Brazil could open its doors to a whole new source of national wealth stemming from research efforts.

THE RIGHT SUPPORT

The cases of Jamaica and Brazil illustrate another crucial point: There is no shortage of intellectual capital in developing countries. The problem such countries face is simply the lack of knowledge, expertise, and funding to fully implement a broad IP system. Efforts by the United States and other developed countries to improve IP systems in developing countries have so far been limited, focused mainly on establishing minimal recognition of intellectual property rights in the laws of developing countries. The daunting task of building IP infrastructures and training people skilled at using them has been left to developing countries themselves.

That has to change. The TRIPS Agreement provides a good framework for expanding the benefits of intellectual property to all peoples. But it won't work if we encourage the developing world not to build IP systems that can protect their own good ideas.

Bruce Lehman is president of the D.C.-based International Intellectual Property Institute, an international development organization that addresses issues of IP as a tool for economic growth, particularly in developing countries. Lehman served as assistant secretary of commerce and commissioner of patents and trademarks in the Clinton administration.