COMMISSION ON INTELLECTUAL PROPERTY RIGHTS

Integrating Intellectual Property Rights and Development Policy
MAIN POINTS

• IP protection of some kind is appropriate at some stage for developing countries. The system provides incentives to invent and develop new technologies that may benefit society.

• But incentives work differently, depending on the supply response they evoke. They impose costs on consumers and other users of protected technologies.

• The balance of costs and benefits will vary according to how the rights are applied and according to the economic and social circumstances of the country where they are being applied.
• Standards of IP protection that may be suitable for developed countries may produce more costs than benefits when applied in developing countries,

• They rely in large part on knowledge generated elsewhere to satisfy their basic needs and foster development.

• The functioning of IPR systems raises genuine concerns, even in developed countries. The submission of patent applications has increased tremendously in recent years – as has the perception that many patents of “low quality” and broad scope are being issued.
MAIN POINTS

• Companies may incur considerable costs, in time and money, determining how – or whether - to conduct research without infringing upon other companies’ patent rights, or defending their own patent rights against other companies.

• Are these costs a necessary price to pay for the incentives offered by the patent system, or can ways be found to reduce them. How does this proliferation of patents affect competition and research?
MAIN POINTS

• The concerns about the impact of IP in developed countries are important for developing countries as well.

• Restrictions on access to materials and data on the Internet can affect everyone. IP rules and regulations may be hampering research on important diseases or new crops that affect developing countries.

• Developing countries may not be sharing appropriately in the benefits from commercialisation of their knowledge or genetic resources when they are patented in developed countries.
WHAT SORT OF RIGHTS?

• IP rights are an instrument of public policy, which should be designed so that the benefit to society outweighs the cost to society. But the IP right is a private one, so the financial benefits and costs fall on different groups within society.

• The IP right is best viewed as one of the means by which nations and societies can help to promote the fulfilment of human economic and social rights.

• In particular, there are no circumstances in which the most fundamental human rights should be subordinated to the requirements of IP protection.
WHAT SORT OF RIGHTS?

• IP rights are granted by states for limited times (for patents and copyrights) whereas human rights are inalienable and universal.

• For the most part IP rights are nowadays generally treated as economic and commercial rights, more often held by companies than individual inventors.

• But describing them as “rights” should not be allowed to conceal the very real dilemmas raised by their application in developing countries, where the extra costs they impose may be at the expense of the necessities of life for poor people.
IMPLICATIONS

• Policy makers need to consider the available evidence before further extending IP rights. Too often, the interests of the “producer” dominate in the evolution of IP policy, and those of the ultimate consumer are either not heard or heeded.

• Developing countries negotiate from a position of relative weakness. They are “second comers” in a world that has been shaped by the “first comers.”

• The issue is how they can mould their IP systems to suit their own economic, social, and technological conditions, as developed countries did in the past.
IMPLICATIONS

• Intellectual property systems may introduce distortions that are detrimental to the interests of developing countries.

• Developed countries should pay more attention to reconciling their commercial self-interest with the need to reduce poverty in developing countries, which is in everyone’s interest.

• Higher IP standards should not be pressed on developing countries without a serious and objective assessment of their impact on development and poor people.
IMPLICATIONS

• We need to ensure that the global IP system evolves so that it contributes to the reduction of poverty by stimulating innovation and technology transfer relevant to them.

• While making available the products of technology at the most competitive prices possible.
RATIONAL

- Patents and copyright inherently confer both costs and benefits to individuals and companies, and to society at large.
- They provide an incentive for invention or creation that may benefit society, as well as the rights holder, but they also impose costs on the users of protected works.
- The value of the patent system needs to be assessed in a balanced way, acknowledging that it has both costs and benefits, and the balance of costs and benefits will differ markedly in diverse circumstances.
RATIONALE

• Similarly too much protection by copyright, or by technological means, may restrict the free flow of ideas on which further progress of ideas or technology depends.

• For developing countries affordable access to works essential for development (e.g. educational or scientific materials) may be affected by unduly strong copyright.
HISTORY

• Developed countries used IP protection as a flexible instrument to help promote their industrialisation.

• Discrimination against foreigners – by refusing them the right to IP protection or by charging higher fees – was common, as was the exclusion of entire sectors, such as food or pharmaceuticals, from patentability.

• In some countries, the patent system was fully implemented only well into the 20th century. The East Asian countries, grew and developed their scientific and technical capabilities in the context of weak IP regimes.
HISTORY

• Now, under TRIPS and growing pressures for harmonisation, most developing nations are restricted in how they can apply the IP system.

• They may not discriminate among fields of technology, or by nationality, and the use of various tools of IP policy that were used historically is circumscribed under TRIPS.
CONTEMPORARY EVIDENCE

• Because developing countries are large net importers of technology from the developed world, the globalisation of IP protection will result in very substantial additional net transfers from developing to developed countries.

• The benefits to developing countries from IP protection would have to come from an offsetting dynamic stimulus to trade, the development of technology, investment, and growth.
CONTEMPORARY EVIDENCE

• In developed countries, strong evidence suggests that for certain industries, particularly pharmaceuticals, IPRs are essential in promoting innovation.

• However, there is much less evidence from developing countries indicating that IPR systems are a key stimulus for innovation.
CONTEMPORARY EVIDENCE

• Indeed, for most developing countries with weak technological capacity, the evidence on trade, foreign investment, and growth suggests IP protection will have little impact.

• For more technologically advanced developing countries, the balance is finer. Dynamic gains may be achieved through IP protection, but at costs to other industries and consumers.