GOVERNANCE OF INTERNATIONAL
IPR SYSTEMS
FOR
SUSTAINABLE DEVELOPMENT.

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ABSTRACT
This paper makes an attempt to study the emerging trends in IPR protection. Today IPR protection remains at global cross roads. Various countries are coming to compliance with the TRIPS Agreement at different implementation deadlines. On the one hand many developing and developed countries have not even made full use of the delayed implementation provided under the TRIPs Agreement and some have signed up to TRIPS plus Agreement. And on the other hand, some developing countries are pushing to expand compulsory licensing for national health reasons and there are segments of the research community who advocate broadly exempting scientific research from patent infringement. Some countries rich in bio-diversity are adding various restrictions on intellectual property rights. Which way to go is the dilemma facing the various stakeholders.

The paper endeavors to study the consequences of the current trends in IPR protection for the human welfare and development and explores new ways in which the IP can promote social goals consistent with the global population’s human development needs, including its needs in health, food security, education, promotion of bio-cultural heritage and contemporary cultural expressions, clean energy and sustainable use of resources.

Keyword: IPR, Human Development, TRIPS, sustainability.
INTRODUCTION

The current governance of IPRs does not seem to be adequate to respond to the needs of human development in the 21st century. During the last 20 years the international rules of IPRs have been essentially shaped by a small group of narrow industry interests with little or no consideration of their likely implications on development and particularly on the poor. The role of the pharma, entertainment and software and semiconductor industries in influencing the negotiation of the TRIPs agreements is unmistakable.

In India the recent (March 2013) Supreme Court judgment denying Novartis, a major multinational pharmaceutical company, continuing patent rights over Glivec, a potent anticancer drug has put the spotlight on many issues of importance to human welfare and development and IPR systems. It is important to note that National Institute of Health and National Cancer Institute – the two public institutions funded by tax payers monies and personal grants had started as early as late eighties gene therapy for cancer based on the path breaking research done by their scientist Dr. Marshall W Nirenberg a joint winner of the Nobel Prize in Medicine for discovering the key to deciphering the genetic code, eventually leading to the discovery of Glivec for the prevention of cervical cancer. Private pharmaceutical companies like Novartis by partnering at a late stage with NCI claimed patent rights to reap huge monetary benefits. Novartis failed to win patent protection for Glivec in India as beta crystalline form of imatinib mesylate failed both the tests of invention and patentability and did not offer enhanced therapeutic efficiency. S C judgement checked the repetitive patenting or ever greening of patent. This is landmark case on the path developing countries should be taking in the governance of IPRs. (Krishna and Whalen, 2013)

TRIPs Conflict with international law on Human rights

Various international forums and academia are paying growing attention to the relationship between IPRs and human rights (Yu, 2007).

The implementation of the TRIPS Agreement in developing countries in particular has raised concerns about the realization of the human rights to food, health and education, as recognized in the International Covenant of Economic, Social and Cultural Rights. Moreover, from a human rights point of view the effects of the TRIPS Agreement are of concern as regards traditional knowledge, food safety, health, the environment, the development of peoples, patentable material and access to culture, science and education. (Seuba, 2009). We need new treaties on access to Knowledge.

The international law prioritizes certain human interests by peremptorily prohibiting their gross violation, and by placing reasonable limits on political, economic or social conduct that renders human rights meaningless. The preamble of TRIPS, which indicate that its primary object is to protect intellectual property rights in the context of free trade while ensuring that intellectual property rights enforcement does not itself
become a barrier to trade which is meant to increase access to goods and thereby human development. However, the contradictory inclusion of TRIPS within the WTO, as the WTO aims to reduce market barriers and remove protectionist measures, while TRIPS (and intellectual property) is protectionist and can create barriers to trade by limiting imports and exports is a matter worth noting. (Frankel, 2005)

**Duties of Sovereign States**

State has a duty to protect the international human rights law. The State duty to protect is founded in international human rights law: ‘international law provides that States have a duty to protect against human rights abuses by non-State actors, including by business, affecting persons within their territory or jurisdiction. “Protect, Respect, Remedy: a Framework for Business and Human Rights”, (Report of spl rep of sec gen 2008)

**TRIPs suffer from many deficiencies resulting in violation of human rights.**

A pharmaceutical innovation policy that relies solely on patent incentives for example will never supply adequate medicines for the diseases of the global poor. Children die of malaria and sleeping sickness. Pharmaceutical company’s commercial motivation means that research is directed first and foremost towards profitable disease. Diseases that predominantly affect people in poorer countries remain relatively under researched. One way to remedy this market imperfection is to create incentives for innovation outside the patent system
The current IPR systems they do not explain how to draw the line between permissible and illegal anti-competitive use of IPRs. TRIPs do not seem effective in all the jurisdictions. TRIPs so far have not been able to provide an international regime that protects the cross border IP related abuses. The IPR systems have failed to keep up with new technological challenge such that it has adversely affected competitive environments for the consumers. Current systems of IPRs lack inclusiveness and is failing to advance an IP agenda that responds to the needs of 21st century. The short run effect of TRIPs will be to transfer significant profits from imitators in lagging countries to right holders in advanced countries especially in the United States. For example the patent provision of TRIPs would have transferred an estimated $5.8 billion (in 1995 prices) in net licensing and nearly all developing countries would have experienced a net outward transfer of funds, towards royalties. (Maskus, 2000)

Deardoff (1992) opined that the effect of stronger IPR is welfare reducing as the costs to purchasers exceeds the benefits to producers, Diwan Rodrik (1991) put forth the view that southern countries would be expected to purchase more from the north reducing the incentive for patent protection. For northern firms both the marginal costs and marginal benefits of protection are reduced- and the overall effect for the world would depend upon the relative magnitude of the two. Helpman (1993) based on his studies concluded that southern consumers are hurt by tighter IPR due to higher prices thereby reducing total consumption and employment. Rapp and Rozek (1990) studied the relationship between the strength of IPR system and modernization variables including GDP, access to electricity and health factors. The relationship was found to be statistically strong positive one but causality was not established.

The studies on the impact of IPR on FDI inflows and trade flows though equivocal, Seyoum’s study (1996) indicates that for the less developed policy factors are more important
than IPR protection and for the emerging economies FDI flow variation is explained more by IPR protection rather than Policy factors. The degree of industrialization is also expected to have a positive effect on the FDI inflows.

Braga (1995) and Carsten Fink and Carlos A. Primo Braga and Ferrantino (1993) found that stronger IPRs increase trade flows as well as investment abroad. Lesser (2001) concluded that stronger IPR increase both FDI and imports leading to a policy conclusion that increased internationalization is a benefit of TRIPs compliance. Some studies focused on finding relationships between development and country’s level of patent protection. Ginarte and Park (1997) found a strong correlation between the strength of IPR and GDP per Capita. Determinants of economic development like R & D expenditure, market freedom, openness have a more direct bearing on IPR protection. In less wealthy countries most R&D spending is by the public sector which are less likely to use IPR protection and therefore a policy ramification that can be drawn from Ginarte and Park’s work (1997) is that the less wealthy countries which have lower levels of R&D spending should economize on the institutional costs of providing IPR protection. Critics of IPR frequently note that Netherlands and Switzerland did not adopt patent laws until 1912 when their economies were well established. Studies show that stronger IPR have long been associated with higher per capita GDP (Grief, 1987).

Graham Dutfield’s (2003) recent study of the history of the pharmaceutical industry also reveals the different ways in which European states were able to exploit freedom of design over their patent laws. The rise of a successful Indian generic industry was importantly assisted by the Indian government’s planning of its patent law (Omer 2002).

The success of East Asian economies in the 1970s and 1980s, the so-called tiger economies, did not depend on high standards of intellectual property protection. These economies only became fully integrated into the intellectual property paradigm once they had become economically successful and then through US unilateral trade action against them, rather than through voluntary acceptance of the regime (Drahos with Braithwaite 2002: ch.6).

Developing countries are under pressure from developed countries for reasons of trade to adopt stringent IPR policies. Combined with the Most Favored Nation clause of the WTO this process of regional integration and bilateral agreements is therefore likely to result in a further increase in IPR levels for many countries in the near future. Steidlmeier (1993) captures the gist of the complaint: “developing countries argue that individual claims on intellectual property are subordinated to more fundamental claims of social well being.” He notes these countries also reject the trickledown theory. That is the notion that technological developments will eventually be transferred to others despite a strong system of protections. This has yet to be validated. In the meanwhile across the world small pockets of prosperity are getting surrounded by huge patches of poverty which are alarmingly getting enlarged. TRIPs has been impeding Creativity and Innovation in no uncertain terms. Lessig (2001) has strongly criticized tighter intellectual property protection and its effects on innovation on internet. Lessig’s argument is that innovation and creativity depend upon free and uncontrolled resources. The Key Logical layer of information infrastructure being open has led to net’s ubiquity and rapid development. has thrown the spot light on how excessive copyright protection inhibits consumer freedoms such as the freedom to share a popular CD or a movie with a friend.

Castells (2001) points out that thanks to Internet’s open architecture- users became open producers of the technology and shapers of the whole network.” From their contributions a “a
flurry of never planned applications resulted- from e mail to bulletin boards and chat rooms, the MODEM and also the hypertext. But slowly internet also due to commercialization is becoming less open and less conducive to creativity and if the trend continues can become private property entirely.

Article 50 of the Agreement on TRIPs puts restrictions on legal buyers and Digital Rights management technologies help pirates being able to get more utility out of the product than legal consumers. The passage of Copyright term Extension Act- CTEA, extending the period by 20 years arbitrarily and Digital Millennium Copyright Act –DMCA that forbids ant circumvention of the code that protect the copyrighted material. DMCA does not provide for circumvention for fair use. Copyright terms are now getting absurdly longer. On the internet the works which are waiting to go into the public domain are being delayed. Internet can digitize substantial parts of national heritage and make it available to the world. The harmonized IPRs are extending the copyright terms locking up cultural and educational materials that should be made available to the world. Some digital information products have strong network effects in the sense that they become more valuable to a user when there are more users of the same product. If such products are sold to some users but pirated by others, the revenue from sales of legal copies may still go up when some piracy is permitted and strict IPR enforcement would be self defeating. Internet offers huge opportunities to achieve innovation and facilitate the dissemination of cultural and educational materials. Yet the IPR systems have been focusing on Internet’s potential for illicit coping.

Consumption of intellectual objects is nonrivalrous that is one person’s consumption does not lessen the consumption of any one else. This lack of rivarousness diminishes the need for the governments to regulate them.

Some firms use patents as bargaining chips in cross licensing agreements. Each player would like to have as many patents as possible in their quiver for strategic use. The big players are becoming powerful and as result innovation are not moving forward.

TRIPs however by increasing the strength of IPRs reduces the possibility to free ride on technological knowledge produced in the North for most developing countries and limits the South to formal channels of technology transfer, which might be associated with substantial costs. This also with the potential price increases and/or reduced product availability in the South and substantial implementation and enforcement costs associated with TRIPs have raised objections from the developing world. Market failures, troubled access to medicine, impediments to free flow of information, copyright overextension, digital right protection, overkill and patents stifling rather than stimulating innovation are just a few of the disparaging themes around intellectual property

Achieving basic Human Rights

The UN Committee on economic, social and cultural rights- the CESCR Committee Notes that human rights are fundamental as they are inherent to the human person as such, whereas intellectual property rights are first and foremost means by which states seek to provide incentives for inventiveness and creativity, for the benefit of the society as a whole. The intellectual property rights are given by the state - can be taken away by the state- they are temporary. May be revoked, licensed or assigned.- may be traded, amended or even forfeited.
According to the Committee- human rights are enduring, fundamental, inalienable and universal entitlements and are not negotiable.

**Knowledge has become a basic human right now.**

For developing countries the coming century of knowledge-based growth raises two basic development priorities. The first is that these countries must give more urgent attention to encouraging investment in human capital. This essentially translates into investment in health and education. Without growth in human capital developing countries will be left to participate in simple commodities markets rather than the knowledge economy. The second basic priority is to think creatively about models of governance for the production of knowledge that maximize the participation of developing countries in the processes of innovation, that maximize the spillover benefits of knowledge and that minimize the social cost of accumulating knowledge.

Argentina and Brazil put forth a proposal in 2004 (Proposal by Argentina and Brazil for the Establishment of 16a Development Agenda for WIPO 2004). the Assemblies decision on the Development Agenda proposal welcomed the proposal, placing it in the context of international instruments such as the United Nations Millennium Declaration.

The treaty should be written from multiple perspectives such as, for example, human rights, rights of copyrights users, the open source movement in software and other standards, and the access-to-medicines lobby.

When states become parties to an increasing number of treaties, especially preferential trade agreements that cover intellectual property, their capacity to entrench treaty-based exceptions to the higher standards in those treaties lessens.

The principle that governments have a duty under human rights law to regulate property in ways that promote the primary rights and values of their citizens. Having established that intellectual property rights are the regulatory servants of basic human rights the framework treaty would then identify those basic rights.

A treaty on access to knowledge would therefore place at the centre of its basic rights the right to health and the right to education. The right to food security, traditional community rights and perhaps most obviously the right to development. The signatory states should commit its members to some sort of national machinery of implementation.

Infringement of intellectual property cannot be treated as a crime, new areas of intellectual property should not be created, Non extension of privileges to IP rights holders, not to strengthen the tests of infringements, not to increase the duration of the rights.

The licence is a practical instrument that provides people with a direct means of exercising the abstract right of sharing in scientific advancement, a right recognized in The Universal Declaration of Human Rights.

Though Radical reform of the current intellectual property regime is not for the time being feasible in geo-political terms a treaty on access to knowledge. And models that encourage the use of knowledge assets in open access systems of innovation which can eventually strengthen...
the human rights is definitely desirable. There is a need to stimulating the emergence of alternative models for the governance of knowledge. The Treaty should recommend practices that would give all the parties maximum flexibility based on ideas of the experts working free from all commercial interests.

The treaty on access to knowledge can be a low-cost way of beginning the process of constructing an alternative to the present property-based forms of governance for knowledge. In the absence of an alternative the present form of governance will simply continue to strengthen. By linking intellectual property to the human rights framework the treaty would be able to draw on the resources of an established international juridical order to promote a development agenda.

At the International Level there should be a Moratorium on Further Strengthening of IPR Regimen. ECOSOC urged that all proposals for the IPRs should be examined for Human rights impact assessment prior to the adoption and after a period of implementation of legislation for the protection of IPR’s.

Developing Countries should be educated and encouraged to incorporate the Provisions of Compulsory Licensing in the IPR Legislation; Provision for Experimentation on a patented invention; Bolar Provision - to obtain marketing approval without patent owner’s permission; provisions to resist Ever-greening of Patents; Allowing Parallel Imports or Grey-Market Imports; harmonizing IP law with Competition law to encourage competition.

There is need for mechanism to monitor the role of developed countries in closing the North-South technological gap which has continued to grow since the adoption of the Agreement. Article 7 (“Objectives”) states that the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations. The obligation for developed countries to provide incentives for technology transfer are in Article 66.2. Least-developed countries want this requirement to be made more effective. In Doha, ministers agreed that the TRIPS Council would “put in place a mechanism for ensuring the monitoring and full implementation of the obligations”. The locus of decision-making regarding modes of learning and areas for focus must shift away from foreign bodies to local agents and authorities.

Governments should provide incentives in an effective way by only assisting projects that are socially beneficial but not very profitable for the firms that own and could transfer the technology; and- Conditions for the efficiency of the Technology Transfer operations involve the choice of relevant partners both on supply and demand sides, selection of the right area for focus (related to a clearly expressed local demand for technology) and the creation of organizational forms that will favor the consolidation of the transfer (absorption, adaptation and subsequent spillovers), as well as the related entrepreneurial dynamic. Governments should make as much use as possible of public-private partnerships (PPPs) as a mechanism for ensuring both the effectiveness of the intervention and the efficiency of the TT operation. Technology transfers have to be operated in many domains (including export-oriented industry). But they must be particularly supported in those domains that correspond to the model of innovation central to
economic growth in LDCs: that is, entrepreneurial activities meeting needs in local markets that are likely to generate domestic spillovers. In other words, TTs must offer a positive supply.

In Least-developed countries (LDCs) like Bangladesh where the demand is on the increase IPRs protection could be used as a vehicle for economic development through trade. IPRs protection could be used as a vehicle for economic development through trade. By appropriating rights, the country could use its comparative advantage of reverse-engineering, adding value through adaptation of existing technology goods (knowledge goods) accessed in formal and non-formal means. Quantitative research implies that in countries which have little ability to imitate to meet survival needs, standardizing IPRs protection not only restricts the previously free use of technology/knowledge goods, but also increases the cost of technological acquisition. In fact it only refers to economic performance in terms of human development and the human development supplements economic development by incorporating social welfare considerations and of sustainable development. (Duffield and Suthersanen, 2008).

Developing countries should be encouraged to take advantage of differential pricing. Differential pricing would allow companies that make patented drugs to recover most of the costs of research and development in richer markets and at the same time to sell or license production at lower prices in lower income countries. Advocates said this could be a win-win solution if consumers in richer countries do not face higher prices as a result... Critical to the success of this would be methods of preventing lower priced drugs from finding their ways into rich country markets

IPR systems are killing competition. The big pharmaceuticals, which hold patents of life saving drugs, comprise private monopolies with the ultimate aim of profit maximization. Because they lack competition, domestic and global, the prices in each country are designed for profit maximization.

The notion that the big pharmaceuticals are the most efficient bodies to develop new drugs can be challenged. There is very little transparency on actual spending on R&D - i.e. the public has very little control on the efficiency of R&D. the research seems to be directed towards strong markets. Public decisions on where research funding should be spent will ensure more public control on priority areas.

Many ideas to new drugs have been developed in national research institutions, or developed by traditional medicine in developing countries. The ideas should thus already be regarded as a public good. The company that has bought the idea from the researcher/traditional doctor does further development. Competition on efficient use of research could be an option which could promote small domestic companies as well.

Incentives can be developed so that the pharmaceutical industry conducts research on the diseases of priority to society, and keep their full monopoly rights. But governments may also want another solution where they for e.g. purchase relevant research from research institutes, and reduce the monopoly rights of the industry.
There is a need to develop a database on the patent status in WIPO Member States of relevant diagnostic tools and medicines for at least 10 non-communicable and communicable diseases. Such information will also include information on the availability of generic versions of the tools and medicines. The database will be useful in identifying the patent status of medicines for both communicable and non-communicable diseases and how access to these medicines can be better ensured by making full use of the available flexibilities.

Competition law is the principal legal avenue for exercising control over abuse of power with respect to intellectual property rights. Without competition a monopolist who holds IPRs would not have any incentive to reinvest in further innovation since this undertaking would already control the market and would be able to impose monopoly.

IP law and Competition law” share the same basic objective of promoting consumer welfare and an efficient allocation of resources. Innovation constitutes an essential and dynamic component of an open and competitive market economy. IP rights promote dynamic competition by encouraging firms to invest in developing new or improved products and processes. So does competition by putting pressure on undertakings to innovate. Therefore both intellectual property rights and competition are necessary to promote innovation and ensure a competitive exploitation thereof.

With some exceptions developing country bureaucratic structures for the implementation and enforcement of competition law are not strong. A commitment of resources to train competition enforcement authorities would assist in building up capacity, as might consideration of regional cooperative enforcement networks.

IP laws and competition laws need to be adequately combined in order to promote dynamic competition as a condition for knowledge based economy. As a consequence, IP law itself is in need of pro-competitive design,

In order to minimize the adverse effect on the plant breeding programmes and protecting small and marginal farmers from buying seeds who typically save them for the next crop, developing countries could build provisions for exceptions for farmers and plant breeders by opting for sui generis system.

To protect the poor masses from the price increases following the introduction of product patents, governments may impose regulation of prices of essential drugs. To keep the price controls effective, transparent formula for evolving them could be made providing for a reasonable mark-up over the cost. Indian experience shows that price controls have proved to be effective means of keeping prices of life saving essential drugs under check. However, given the possibility of transfer pricing manipulation, there may be complications in administering price controls for imported drugs.
The experience of several East Asian countries suggests that petty patents and industrial design patents could be effective means of encouraging domestic enterprises to undertake minor adaptive innovations and foster a innovation based rivalry among them.

**Local Technological Capability Building**

Most industrialized countries of today and newly industrialized countries encouraged local learning through soft patent laws and the absence of product patents in chemicals in the early stages of their development as highlighted earlier. It means that the poorer countries of today will not be able to benefit from an important source of total factor productivity growth (viz. absorption of spillovers of foreign inventions) that was available to countries that have developed already. Adoption of utility models or petty patents and design patents has a greater potential in encouraging local technological activity. Kim (1997) provides a number of examples of Korean corporations being denied technology licenses by patent holders in the Western world forcing them to reverse engineer the products. A number of local enterprises in developing countries will come under pressure to close down or form alliances with larger firms, resulting in a concentration of the industry. Dependence on imports may go up. Maskus and Penubarti (1997) for instance, find that TRIPs could affect import volumes.

**Prices of Medicines and Loss of Consumer Welfare**

The welfare loss to India could be between $1.4 billion to $4.2 billion in a year. Watal (2000) simulates the likely increase in pharmaceutical prices and decrease in welfare in India with the introduction of product patents in 22 existing pharmaceutical products and finds that drug prices can go up manifold.

**Income Transfers from Developing Countries**

The strengthening and harmonization of IPRs regime will lead to a substantial increase in flow of royalties and license fees from developing countries to developed countries. McCalman (1999) quantifies the impact of patent harmonization finds that it has the capacity to generate large transfers of income between countries, with US being the major beneficiary.

Furthermore, the extension of IPRs to plant varieties could further increase the outgo of royalties for the breeder lines of the seed companies even though the basic raw material for the development of these varieties, viz. genetic diversity which is largely found in developing countries and is supposedly the work of generations of farmers in these countries, is generally available to them free.

**Impact on Global Technological Activity and Availability of Drugs**

The spillover effects of R&D activity of other firms is important in inducing firms to undertake R&D compared to appropriability. The R&D outputs of other firms form valuable inputs for the R&D efforts of these firms. Hence, tightening of IPRs is likely to affect innovative activity
adversely by stifling these spillovers. Therefore, it is by no means clear that strengthening of IPRs will increase innovative activity even in the developed world especially for solving the problems and diseases faced by developing countries.

Environmental impact assessment of each IPR Proposal

Each proposal of IPR policy must be subjected to an environmental impact assessment and there is need to have an UN Agency which will specifically work on this either under WIPO or independently. Each proposal on IPR should accompany cost benefit analysis. Only those proposals should be accepted whose benefits far outweigh the cost. Cooperative international efforts to address widespread concerns about the impact of stronger patents, copyrights, trademarks and trade secrets on the prices of medicines and the costs of advanced technologies are extremely important.

The cultural Diversity convention

The cultural Diversity convention - Asserting that cultural diversity is a common heritage of humanity the convention reaffirms state’s sovereign right to formulate and implement their cultural policies and to adopt measures to protect and promote the diversity of cultural expressions within the territory. to define ‘cultural expressions’ ‘cultural industries’ and” cultural activities, goods and services” given the overlap among the terms and the free trade and intellectual agreements. This would somewhat bring down the onslaught of American audio-visual and information services including, film, television and music.

Medical Research and Development Treaty

In 2005 a coalition of 150 NGO’s, public health experts, economists and legal scholars called on WHO to consider a new Treaty- Medical Research and Development Treaty to promote research and development for pharmaceuticals and other medical treatments that functions as an alternative to patents and monopoly drug pricing they endanger.

The Treaty achieves these goals by setting minimum financial obligations for qualifying research and development based on each nation’s gross domestic product. Member states can meet those obligations by funding qualifying research projects within their own borders and they can also fund the research in other countries through a system of tradable credits that resembles the emissions trading mechanisms created for environmental agreements such as Kyoto Protocol.

Focus on comparative advantage

Developing countries wonder if there might be gains from extending TRIPS to areas of their own comparative advantage.
Chief among these are geographical indications for food products and collective marks for textile designs and other products of traditional knowledge. For their part, developed countries (chiefly the United States and the European Union) remain interested in incorporating stronger protection for copyrights on internet transmissions, databases, and other areas.

**Market Access to Developing countries**
Developers unless there are serious commitments by the rich countries to provide additional market access to poor countries in agriculture and labor-intensive goods and services. Beyond that it is difficult to foresee what might emerge.

**International Funding for building regulatory Infra structure**

Many developing countries find the requirement to establish administrative systems and effective enforcement procedures for IPRs to be costly relative to any gains they might anticipate, particularly because economic benefits will go largely to foreign firms over the intermediate term. Technical and financial assistance for funding these costs has been small in relation to overall needs. If IPR holders wish to see their rights protected in poor countries, some international mechanism for generating such funds must be found. In a related vein, pressures are building for developed countries to make effective their commitments to encourage technology transfer.

**The Convention on Biodiversity (CBD),** which claimsthat the underlying resources are owned, or managed by, sovereign nations, are inconsistent in this regard. Efforts to date to establish systems of prior informed consent and benefit-sharing agreements in such resources have been limited.

Countries are required to provide effective protection for new plant varieties, in the form of plant breeders’ rights (PBRs). Such systems provide exclusive marketing rights for developers of new plant Varieties (including those of genetic modification) but permit farmers to retain seeds for replanting and some scope for rival firms to use the protected materials as parents for their own breeding programs. A number of countries have followed the U.S. model of permitting plant developers to opt for PBRs, patents, or both, which raises questions about the consistency of rights. A looming controversy relates to whether so-called genetic-use restriction technologies (GURTs) must be patented under TRIPS.

**Protection of confidential test data**
TRIPS requires governments to protect confidential test data issued in the act of achieving regulatory approval for medicines, foods, and other products. TRIPS is silent on the length of time required for this protection and countries have adopted several different standards. The United States has advocated a global standard of at least five years of protection, while Argentina and Brazil have opted for far shorter periods. The lesser this period the better it is for the developing countries.
Protection norms for collective and traditional knowledge

Establishing protection norms for collective and traditional knowledge, including oral histories, artistic works, music, designs, medical preparations, and methods of production. It is difficult to protect these items with traditional IPRs because they are traditional (not novel) and collectively known. Thus, programs to develop new rights, combining elements of collective marks, copyrights, and trade secrets along with sui generis recognition of traditional practices, will be advanced forcefully by developing countries. One highly contentious issue is whether patents should be available anywhere for items that had been known to the public by means of oral tradition, permitting oral prior art to defeat patent applications. While the United States is adamantly opposed to this Possibility developing countries should be allowed to protect their heritage for sustainable development.

Misappropriation of rights on genetic resources found in developing countries

*Patents have been granted, amongst others, on ayahuasca, kava, barbasco, endod, quinoa and turmeric* The misappropriation by foreign companies and researchers, notably under patents, of genetic resources found in developing countries, (as illustrated by the cases of patents granted on ayahuasca, kava, barbasco, endod, quinoa and turmeric, among others) raises another important policy issue. Some governments and non-governmental organizations have counteracted this form of “biopiracy” by challenging (in some cases successfully) the validity of such patents or by promoting the development of databases on traditional knowledge in order to pre-empt its patentability. The compulsory disclosure of the origin of biological materials in any IPR application has also been proposed.

Variations in policy options should be made available. And choice should be allowed for countries at different moments of economic development.

Participation and transparency

IPR policies have a bearing on everything from access to essential medicines to education to online privacy. Civil society groups have a say on all this and they should be allowed to have a say on this. A narrow group of interests and industry lobbies should not formulate the policy.

Neutrality

IPR policies should not be favorable to any business group – should be neutral and favor the growth of innovation. Both closed source, proprietary and open source, collaborative software Developers use the IPR system to generate innovation of global worth. We should all be concerned about the impact of software patent on software piracy as well as the impact on open source software development.

UN Sub Commission on the Protection and Promotion of Human Rights adopted a resolution which was highly critical of intellectual property protection and stated that that the actual or potential conflicts exist between the implementation of the TRIPs agreement and the realization of economic, social and cultural rights.
It is important for developed counties and multilateral organizations to provide adequate technical and financial assistance for implementation of the new standards in developing nations. To remove impediments to future technology flows. And meet and extend their own commitments to liberalize market access for products of interest to poorer countries notably agriculture and apparel. Assistance should aim to develop rights and opportunities suitable to the needs of entrepreneurs, inventors and artists in poor economies.

Blind and Edler (2003) propose one solution: the introduction of a reward system under which innovators are paid for innovations directly by the government and innovations pass immediately into public domain, since obligatory licensing may obstruct the incentives of the innovators or lead to other even more destructive protection strategies.

**Building symmetric development**

Movement toward global harmonization of IP norms, given the evident differences in costs and benefits from IPRs across countries at different levels of development can build asymmetries in development which can in the long run be injurious to development and peace.

An alternative approach would be to recognize the importance of private IPRs but to depart from global harmonization the principle could be broadened to other departures from unity, such as differential terms of IPR protection keyed to levels of economic development.

There is ‘horizontal’ incoherence between economic or business-focused departments and agencies that directly shape business practices - including trade, investment, export credit and insurance, corporate law, and securities regulation - conduct their work in isolation from and largely uninformed by their Government’s human rights agencies and obligations. (special rep sec gen report 2009)

The UN Committee on economic, social and cultural rights- the CESCR Committee Notes that human rights are fundamental as they are inherent to the human person as such, whereas intellectual property rights are first and foremost means by which states seek to provide incentives for inventiveness and creativity, for the benefit of the society as a whole. The intellectual property rights are given by the state - can be taken away by the state- they are temporary. May be revoked, licensed or assigned.- may be traded, amended or even forfeited. According to the Committee- human rights are enduring, fundamental, inalienable and universal entitlements and are not negotiable.

Harvard economist Sachs (2008), justifiably calls for a reevaluation of TRIPs when he says: “…the global regime on intellectual property rights requires a new look. The United States prevailed upon the world to toughen patent codes and cut down on intellectual piracy. But now transnational corporations and rich-country institutions are patenting everything from the human genome to rainforest biodiversity. The poor will be ripped off unless some sense and equity are introduced into this runaway process…”
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