

Intellectual property

The concept of Intellectual Property (IP) is recognition of the need to provide protection and reward for creativity and innovation, and protection for property like trademarks and trade names. IP rights can also be considered as an instrument of public policy, designed to benefit society through the invention of new drugs, new technologies. From this viewpoint, IP is just as important for developing as for developed countries. But controversy is often generated by the issues surrounding intellectual property.

On one side, mostly the developed world, there is a powerful lobby pushing for longer protection for right holders, believing that intellectual property rights (IPRs) are good for business and for stimulating research and development. On the other side, mostly – but not only – the developing world, there is some hostility towards IP, saying that it cannot stimulate invention where the human and technical capacity is absent, but it rather penalises poor countries by increasing the cost of medicines and agricultural inputs. Furthermore, increased copyright protection for textbooks, journals and computer programmes raises the cost of mass education in developing countries. They push for more access to the benefits of innovation in such areas as pharmaceuticals, software and biotechnology.

IP can also be considered as a system of market control; some observers see patents, for instance, as an exemption to normal competitive trade rules. Trade is about movement of goods and services across borders, but IP law allows owners of IP to stop the movement of goods.

The current debate over access to medicines versus IPR is a stark example of these polarised perspectives. Under pressure from AIDS activists, some pharmaceutical companies have made huge discounts in their AIDS drugs for developing country markets. But some argue against discounting, saying that such two-tier pricing opens the door to infringement of patent rights and undermines the profit margin necessary to reinvest the huge sums needed to develop new drugs. Steps are being taken to allow cheaper generic drugs to reach the market sooner and to end delaying tactics used by some pharmaceutical companies wishing to extend their 20-year patent monopolies. No country has been more actively opposed to medical patents than India. In 1972, the country passed a law which permitted medicines to be copied even if they were under international patent, as long as the process was not the same. An often-quoted statement by Indira Gandhi at the World Health Assembly in 1982 encapsulated the sentiment: "The idea of a better-ordered world is one in which medical discoveries will be free of patents and there will be no profiteering from life and death".

IP – protection or restriction?

During the Uruguay Round of trade negotiations, new international rules for intellectual property were sought. The result was an international agreement on Trade-

related Aspects of Intellectual Property Rights (TRIPS), under the World Trade Organisation (WTO). But bilateral or regional trade agreements between developed and developing countries often include commitments to IP regimes that go beyond or bypass TRIPS requirements; they include limits on compulsory licenses, export bans on drugs produced under such licenses, and patent protection beyond the 20 years required under TRIPS. During the past two decades, the scope, extent and role of IP protection has expanded at an unprecedented rate, covering new areas such as new technologies, biotechnology and information technology. Few areas remain untouched by IP issues.

In 2001 a Commission on Intellectual Property Rights (CIPR) was set up by the UK government to examine how IPRs could be designed to benefit developing countries by providing objective, evidence-based policy recommendations. Its report "Integrating Intellectual Property Rights and Development Policy", published in September 2002, is a valuable resource in the debate on how IPR might better serve to promote development and reduce poverty.

Many countries' economies took off under weak IP systems – Japan, Taiwan and South Korea, even the US and Europe, using strategies of technological imitation. Indeed, some observers believe that "creative" imitation is a necessary stage in the process of becoming innovative. But developing countries nowadays, in an era of strengthened IP regimes, may not be able to follow this path. Uncreative imitation (such as counterfeit), on the other hand, provides no scope for innovation and may remove the incentive to innovate. Indeed, counterfeit goods can be a threat to human safety when they involve pharmaceutical products or spare parts for vehicles and aircraft. Furthermore, some economists believe that growth will depend on Foreign Direct Investment and technology transfer, which need strong legal regimes, including IP protection.

What is sure is that the right equilibrium needs to be found between rewarding and protecting (but not over-protecting) intellectual efforts, while respecting the right to access and the construction of a common heritage. Development objectives need to be integrated into policy on IP, in national IPR regimes and in international agreements. For this to happen, developing countries must be involved in setting standards in IP.

The CIPR summarised the situation as follows:

... our conclusions place a responsibility on the international community to assess whether the mechanisms in place for negotiating intellectual property standards, both multilaterally and bilaterally, take sufficient account of the interests of developing countries and poor people. We consider that the institutional framework is not optimally suited to this task and needs to display considerably greater sensitivity to these issues."

D.M.

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European Commission