



Integrating Intellectual Property Rights and Development Policy



Commission on Intellectual Property Rights

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Integrating Intellectual Property Rights and Development Policy

Report of the Commission on Intellectual Property Rights

London September 2002

**Commission on
Intellectual Property Rights**

PREFACE

Clare Short, the Secretary of State for International Development, established the Commission on Intellectual Property Rights in May 2001. We are made up of members from a diversity of countries, backgrounds and perspectives. We have each brought very different viewpoints to the table. We incorporate voices from both developed and developing countries: from science, law, ethics and economics and from industry, government and academia.

I believe that it is a considerable achievement that there is so much that we have been able to agree on about our approach and our basic message. As our title implies, we consider that development objectives need to be integrated into the making of policy on intellectual property rights, both nationally and internationally, and our report sets out ways in which this could be put into practice.

Although appointed by the British Government, we have been given absolute freedom to set our own agenda, devise our own programme of work, and come to our own conclusions and recommendations. We have been given the opportunity and financial support to improve our understanding of the issues through commissioning studies, organising workshops and conferences, and visiting officials and affected groups throughout the world. We have been supported by a wonderfully capable Secretariat supplied by the DFID and the UK Patent Office, and we want to thank them especially.

We first met on 8-9 May 2001, and have held seven meetings since. All or some of us have visited Brazil, China, India, Kenya, and South Africa, and we have consulted with public sector officials, the private sector and NGOs in London, Brussels, Geneva, and Washington. We visited the Pfizer research facility in Sandwich. A list of the main institutions we have consulted appears at the end of the report. We have commissioned seventeen working papers and held eight workshops in London on various aspects of intellectual property. And we held a large conference in London on 21-22 February 2002 to ensure that we could hear questions and concerns from many perspectives. We regard these sessions as important parts of our work in their own right. They brought together a range of individuals with a view to facilitating dialogue and exploring the scope for moving some of the issues forward.

On behalf of all of us I want to thank all those people from all over the world, far too numerous to mention, who provided input to our discussions and who prepared working papers.

Our tasks were to consider:

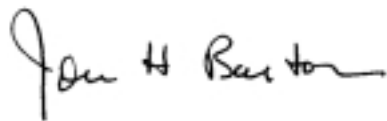
- how national IPR regimes could best be designed to benefit developing countries within the context of international agreements, including TRIPS;
- how the international framework of rules and agreements might be improved and developed – for instance in the area of traditional knowledge – and the relationship between IPR rules and regimes covering access to genetic resources;
- the broader policy framework needed to complement intellectual property regimes including for instance controlling anti-competitive practices through competition policy and law.

We decided early on not just to attempt to suggest compromises among different interest groups, but to be as evidence-based as possible. This has been challenging, for there is often limited or inconclusive evidence, but our Secretariat, extensive consultations, and the papers we commissioned, helped us in identifying the available evidence, which we then carefully evaluated.

We also recognised early on the importance of distinguishing nations (middle or low income) which have substantial scientific and technological capability from those which do not. We attempted to learn about the real impacts of intellectual property, both positive and negative, in each of these groups of nations. We chose to concentrate on the concerns of the poorest, both in low and middle income nations.

We all concur in this report. Our aim is practical and balanced solutions. In some cases we have adopted suggestions made by others but the responsibility for the conclusions is ours alone. We hope that we have fulfilled our task and that the report will be a valuable resource to all those engaged in the debate on how intellectual property rights might better serve to promote development and reduce poverty.

Finally I want to thank Clare Short, and the UK Department for International Development, for their foresight in creating the Commission on Intellectual Property Rights. I have been honoured to chair it. It has been an extraordinary experience for me, and for all of us on the Commission. We received a challenging remit. We greatly enjoyed our task and the opportunity to learn from one another and, in particular, from the many who have contributed to our work.



JOHN BARTON
Chairman

FOREWORD

There are few concerned with IP who will find that this report makes entirely comfortable reading. No greater compliment can be paid to Professor Barton and his team of Commissioners. Nor can there be any greater indication of the foresight and courage of Clare Short, the UK Secretary of State for International Development, in creating the Commission and setting its terms of reference in the first place.

Perhaps there is something about the era we live in that has encouraged blind adherence to dogma. This has affected many walks of life. It certainly has affected the whole area of intellectual property rights. On the one side, the developed world side, there exists a powerful lobby of those who believe that all IPRs are good for business, benefit the public at large and act as catalysts for technical progress. They believe and argue that, if IPRs are good, more IPRs must be better. On the other side, the developing world side, there exists a vociferous lobby of those who believe that IPRs are likely to cripple the development of local industry and technology, will harm the local population and benefit none but the developed world. They believe and argue that, if IPRs are bad, the fewer the better. The process of implementing TRIPS has not resulted in a shrinking of the gap that divides these two sides, rather it has helped to reinforce the views already held. Those in favour of more IPRs and the creation of a "level playing field" hail TRIPS as a useful tool with which to achieve their objectives. On the other hand those who believe that IPRs are bad for developing countries believe that the economic playing field was uneven before TRIPS and that its introduction has reinforced the inequality. So firmly and sincerely held are these views that at times it has appeared that neither side has been prepared to listen to the other. Persuasion is out, compulsion is in.

Whether IPRs are a good or bad thing, the developed world has come to an accommodation with them over a long period. Even if their disadvantages sometimes outweigh their advantages, by and large the developed world has the national economic strength and established legal mechanisms to overcome the problems so caused. Insofar as their benefits outweigh their disadvantages, the developed world has the wealth and infrastructure to take advantage of the opportunities provided. It is likely that neither of these holds true for developing and least developed countries.

It is against that background that the Secretary of State decided to set up the Commission and ask it to consider, amongst other things, how national IPR rights could best be designed to benefit developing countries. Inherent in that remit was the acknowledgement that IPRs could be a tool which could help or hinder more fragile economies. The Commissioners themselves represent as impressive a cross-section of relevant expertise as one could wish. They have consulted widely. This report is the result. It is most impressive.

Although the terms of reference have required the Commission to pay particular regard to the interests of developing countries, it has done this without ignoring the interests and arguments of those from the other side. As it states, higher IP standards should not be pressed on developing countries without a serious and objective assessment of their development impact. The Commission has gone a long way to providing such an assessment. This has produced a report which contains sensible proposals designed to meet most of the reasonable requirements of both sides.

However, the production of a series of workable proposals is not enough by itself. What is needed is an acceptance and will to implement them. Once again, in this respect the Commission is playing a major role. This is not the report of a pressure group. The Commission was set up to offer as impartial advice as possible. Its provenance and makeup should encourage all those to whom it is directed to take its recommendations seriously.

For too long IPRs have been regarded as food for the rich countries and poison for poor countries. I hope that this report demonstrates that it is not as simple as that. Poor countries may find them useful provided they are accommodated to suit local palates. The Commission suggests that the appropriate diet for each developing country needs to be decided on the basis of what is best for its development, and that the international community and governments in all countries should take decisions with that in mind. I very much hope this report will stimulate them to do so.

A handwritten signature in black ink, appearing to read "Hugh Laddie". The signature is written in a cursive style with a horizontal line underneath.

SIR HUGH LADDIE
UK High Court Patents Judge

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