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RECENT DEVELOPMENTS AND CHALLENGES IN THE PROTECTION OF
INTELLECTUAL PROPERTY RIGHTS (IPRS)

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INTRODUCTION

Intellectual property is associated with economic benefits. In stable economies, intellectual property enjoys a high degree of protection and therefore immediate benefits can be felt. However, in developing economies, enormous challenges in the protection of intellectual property rights are faced. These challenges are, inter alia, state infrastructures, property holders infrastructures, communities' awareness, tangible benefits.

Below I would like to discuss the above-mentioned challenges and propose possible solutions:

a) State providing adequate infrastructure

The State, if it is a member of the Trade Related Aspects in Intellectual Property Rights Agreement (TRIPS), is expected to provide a conducive environment for the thriving of intellectual property rights in the economy of a particular state.

(i) State policy makers

Policy makers of any member state, in formulating economic and legal policies should take cognizance of intellectual property rights. This will assist drafters of legislation to be sensitive to the needs of intellectual property regime. This also sends a strong message to the legislature and parliament. Without winning the confidence and co-operation of policy makers in any government, the challenges for the protection of intellectual property rights become a permanent feature, which may be difficult to uproot.

(ii) Legislature

If the legislature is aware of intellectual property policies, it is very easy to address recent developments and challenges.

(iii) Courts and prosecution

Enforcement of intellectual property also has two legs, i.e. civil and criminal prosecution. Training of judges and prosecutors who deal with criminal cases should be intensified. State attorneys who deal with civil cases should also receive training in intellectual property rights.

(iv) Drafters of laws

All intellectual property laws must comply with the TRIPS Agreement and therefore drafters of Laws must also have a thorough understanding of this Agreement in order to capture precisely the aim and objectives.

(v) Police

The Police have an important role to play in the enforcement of intellectual property rights. Seizure of counterfeit goods, search of properties where counterfeit goods are stored, destruction of counterfeit goods (after a court

order) is conducted by the Police. Police are also summoned to provide evidence during both criminal and civil trials. In South Africa the Police, prosecution and the Registrar's Office cooperate in the enforcement of the Counterfeit Goods Act, 1997. The Registrar's Office is responsible for training these officials and also conducts workshops with WIPO and the World Customs Union. The Registrar's Office also furnishes evidence to prosecution, e.g. registration certificates and sometimes viva voce evidence.

(vi) Border Police

Border Police should strongly liaise with intellectual property holders. Intellectual property holders' law enforcement agents should also conduct joint workshops with Border Police and this may assist in intelligent gatherings sharing databases. Border Police should also cooperate with main land Police as well as the Registrar's Office.

(vii) Departmental law enforcement agents

Departments, where possible, should also have their own enforcement agents. In South Africa, the Department of Trade and Industry has a specialized unit to enforce all its trade laws. This unit is called the National Inspectorate. Members of this unit have, in terms of the Counterfeit Goods Act, powers to seize counterfeit goods, search properties and to prosecute offenders. There is a high degree of co-operation between this unit and the Registrar's Office. The Border Police and Police are also inspectors in terms of the Counterfeit Goods Act and therefore sometimes, joint operations are carried out. Equally, the Department of Health has a specialized unit, which deals with drugs. This is so since drugs (pills) of lower quality are dangerous to health and therefore creation of specialized units may be of help. In the same vain, the Department of Communication is creating a cyber-cop unit to deal with cyber squatting and issues related to e-commerce infringements. The South African Government is investing heavily in this area of enforcement.

(viii) Intellectual property registration offices

These offices need to properly resourced in all respects.

b) Property holders infrastructure

Holders of intellectual property rights should also invest in the enforcement of their intellectual property rights. They may do so by forming units, which cooperate with all state law enforcement agencies mentioned above. These units should act within the law and therefore training on intellectual property enforcement is of paramount importance. In South Africa, owners of intellectual property rights are active in this regard, but sometimes unnecessary competition may be self-defeating.

c) General public awareness

Community awareness, in my opinion, is the cornerstone for the success of intellectual property regimes. If the general public is aware of the benefit to be derived from

the intellectual property system, enforcement and/or protection of the intellectual property regimes become very easy. The general public, rich and poor, should be assured that this regime will create jobs and promote investment.

If musicians, artists, performers, composers/authors film makers, script writers do have strong collective management of their rights which distribute royalties fairly, the general public may cooperate in protecting the copyright and neighboring rights regime. When medicines are affordable to the poor, the general public will definitely cooperate with the law enforcement agencies in the protection of these rights.

The general public may also become creative and innovative if their traditional intellectual property rights are also respected and given value with their states, and by the international community. In this regard, I would like to mention in passing that recent developments in intellectual property system may be of greater assistance in advancing the economic status of the general public. This will be so when:

- ? biodiversity and genetic resources will be protected by domestic legislation and the international community. The issue of bio-piracy, like cyber-piracy should be dealt with accordingly;
- ? folklore and handiwork of communities are protected by legislation;
- ? geographical indications and appellations of origin are protected;
- ? indigenous knowledge systems are protected;
- ? e-commerce in relation to intellectual property in its entirety is dealt with; and
- ? collective management of copyright and neighbouring rights regime is intensified.

South Africa is legislating for all these issues and it is hoped that WIPO will also address these issues at an international level.

CONCLUSION

In conclusion, I would propose that WIPO should continue with its awareness programmes, build capacities in developing countries, as well as addressing issues relating to recent developments as stated above.

When this is achieved, the respect of intellectual property will be enhanced and economies of all member states will be improved.

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