

# Ethical and Ecological Aspects of Industrial Property Rights

CHAIR: THOMAS COTTIER

1. Rewarding Creativity for Conserving Diversity in the Third World: Can IPR Regime Serve the Needs of Contemporary and Traditional Knowledge Experts and Communities in Third World?

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*The speaker pleaded for a new framework for safeguarding the IPRs of knowledge-rich economically poor individuals and communities in third world countries and presented a new global system of registration for grassroots innovations (Honey Bee)*

Regions of high biodiversity are often inhabited by the poorest people. The irony is that many local healers and other herbal experts do not even charge for their services to the community. They conserve biological diversity despite remaining poor themselves. Their superior ethics can not be a reason for our inferior ethics. The fact that the younger people are no more inclined to acquire and improve this knowledge further increases the risk of knowledge erosion. The contemporary innovations suffer even worse fate compared to traditional knowledge. In the absence of any institutions to recognise, respect and reward the grassroots creativity, the intellectual properties are exploited by national and multi-national corporations inviting a charge of biopiracy. The projected losses to third world on this account could be many times more than the suspected loss to developed countries due to copyright and IPR piracy in the third world.

I summarise the arguments of those activists, NGOs and policy makers who oppose the provisions of TRIPs and justify the need for local knowledge to remain in common domain. I critique then the proposals of Community intellectual property rights in so far as these subsume all local knowledge under the rubric of traditional knowledge and all individual knowledge under Community knowledge. The framework for safeguarding

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the IPRs of knowledge-rich economically poor individuals and communities is presented next. A case is made for the following changes: (1) a global registration system of traditional knowledge as well as contemporary innovations, (2) the newness and non-obviousness of traditional knowledge should be seen in the light of available repertoire on the subject and the transaction costs involved in easily accessing the same, (3) the norms regarding exhaustion of the rights due to publication of local knowledge should be reconsidered and modified so that incentives to share the knowledge by local communities with outsiders are not affected adversely, (4) every patent office in a western country should insist that the patent applicant declares that the knowledge and resources used in a patent have been obtained lawfully and rightfully, (5) the challenge to marry two rather conflicting goals of easy and quick opportunity for lateral learning (through local language publication) among people and sharing of benefits through value addition in the same knowledge as attempted by Honey Bee network be addressed.

Since it will be very difficult for any and every community to seek the protection of its knowledge and inventive recipes for various purposes such as herbal pesticides, human or veterinary medicines, vegetative dyes, etc., a registration system should be developed as explained below.

SRISTI and the Honey Bee network have been pleading for a global system of registration for grassroots innovations. The Honey Bee database (one of the world's largest databases of its kind) has more than 2,300 innovations, with the names and addresses of the innovative/creative community and/or individuals along with the name of the communicators through whom we learned about these innovations. A registry will prevent any firm or individual to seek a patent on community knowledge as well as on knowledge and innovations produced by individuals without some kind of cross licensing. It will be possible to achieve the following results from such a registry: (1) acknowledgment of individual and collective creativity, (2) the grant of entitlements to grassroots innovators to receive a share of any returns that may arise from commercial applications of their knowledge, innovations or practices with or without value addition, (3) linking the golden triangle of entrepreneurship by linking investments, enterprise and

innovations-small-scale investors in North and South cannot afford to go various countries, scan the diversity of knowledge and resources, negotiate contracts and invest up front huge investments for value addition-(4) an autonomous authority of which local community representatives will be the majority members could be entrusted with the responsibilities of having access to all the contracts, (5) each entry in the register will be coded according to an universal system like ISBN. The postal pin code of the habitat of the community or individuals registering innovations will be incorporated in the indexation system so that geo-referencing of innovations can be done, (6) the entry in the register will at the first stage be mere acknowledgment of creativity and innovation at grassroots level. But later some of the innovations will be considered appropriate for the award of inventors' certificates or a kind of petty patent which is a limited purpose and limited duration protection. The essential purpose of this innovation is also to enable the potential investors (a co-operative of consumers, producers, an entrepreneur or a large firm in private or public sector) to access the innovations and explore opportunities of joint ventures or licensing of innovations for research and commercialisation -the transaction costs of both the investors and innovators will be reduced through the registry-(7) the award of a certificate will also increase the entitlement of innovator/s to access to concessional credit and risk cover so that the transition from collector or producer of herbs to developer and marketer of value-added products can take place in cases where innovators deem that fit, (8) the registration system will also be part of knowledge network linking problem solving people across the world at grassroots level (see discussion on the knowledge network in the later section).

We realise that most governments in developing countries do not have , resources even to pay the salaries of public administrators, to expect them to provide benefits to conservators of diversity and developers of innovations is not a realistic goal. If the private or public or co-operative sector has to share the benefits, it should obviously make profits. IPRs do play a significant role in generating these profits. However, very broad patents like the one in the case of transgenic cotton (which was later rescinded) are in the interest of neither science nor business efficiency in the long term.

So far as sustainable technologies are concerned such as herbal pesticides, growth regulators, vegetative dyes etc, the South can provide technologies to North. But if such

innovations are used without appropriate reciprocities, then the knowledge systems which produced these innovations will not last very long. It is true that many poor people in the third world are creative and innovative but they cannot afford costly attorneys. A systems has to be evolved to provide this help through public interest institutions or initiatives. Inventor assistance programmes like the ones tried by the Franklin Law Pierce Centre should be tried out at global scale and in many countries immediately. The patentees in the case of innovations like the ones based on neem trees should agree to share part of their profits with an inter- national innovations support and biodiversity conservation fund. The paper makes a case for adapting patent systems to not only accommodate the creative urges of local communities but also ensure that this vibrant and dynamic laboratory for developing sustainable technologies and products does not die down just because a community of IPR experts could not fathom its long-term potential.