

# Intellectual Property Rights: Implications for Development

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For details on the activities of the Project and all available material, see <http://www.ictsd.org/iprsonline>

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## FOREWORD

This policy discussion paper is one of the products of the joint UNCTAD-ICTSD Project on Intellectual Property Rights and Sustainable Development. It is intended to contribute to a better understanding of the key policy issues raised by intellectual property rights (IPRs) and their impact on economic development, poverty alleviation and sustainable human development.

Part One provides a general explanation of the rationale behind IPRs and their evolution, as well as an overview of the multilateral system for their protection. These international rules have important socio-economic implications that are dealt with in Parts Two and Three. Part Two addresses some broad cross-cutting issues that constitute the basic premises behind the adoption of stronger IPR regimes in developing countries, such as the fostering of innovation and creativity as well as access to and use of new technologies. Finally, Part Three discusses the impact of new IPR standards on specific areas of concern for developing countries, namely: health; food, agriculture and biodiversity; traditional knowledge and folklore; and access to knowledge and educational, technical and scientific information. Parts Two and Three therefore analyse in more depth some of the issues addressed in Part One.

Intellectual property rights have never been more economically and politically important or controversial than they are today. Patents, copyrights, trademarks, industrial designs, integrated circuits and geographical indications are frequently mentioned in discussions and debates on such diverse topics as public health, food security, education, trade, industrial policy, traditional knowledge, biodiversity, biotechnology, the Internet, and the entertainment and media industries. In a knowledge-based economy, there is no doubt that an understanding of IPRs is indispensable to informed policy making in all areas of human development.

Intellectual property (IP) was, until recently, the domain of specialists and producers of intellectual property rights. However, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) concluded after the Uruguay Round negotiations signalled a major shift in this regard. The incorporation of intellectual property rights into the multilateral trading system and their relationship with several key public policy issues has elicited considerable concern over their pervasive role in people's lives and in society in general. Developing country members of the World Trade Organization (WTO) no longer have the policy options and flexibilities developed countries had in using IPRs to support their national development. But TRIPS is not the end of the story. Significant new developments are taking place at the international, regional and bilateral levels that build on and strengthen the minimum TRIPS standards through the progressive harmonization of policies towards the standards of the technologically advanced countries. This implies that there are

considerable challenges ahead in designing and implementing IP policy at the national and international levels.

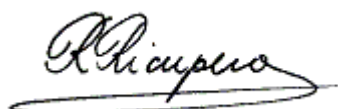
Empirical evidence on the role of IP protection in promoting innovation and growth in general remains limited and inconclusive. Conflicting views also persist on the impact of IPRs on development prospects. Some point out that in a modern economy, the minimum standards laid down in TRIPS will bring benefits to developing countries by creating the incentives structure necessary for knowledge generation and diffusion, technology transfer and private investment flows. Others stress that intellectual property, especially such elements as the patenting regime, will adversely affect the pursuit of sustainable development strategies, for example by: raising the prices of essential drugs to levels that are too high for the poor to afford; limiting the availability of educational materials for developing-country school and university students; legitimising the piracy of traditional knowledge; and undermining the self-reliance of resource-poor farmers.

It is urgent, therefore, to address the following questions: How can developing countries use IP tools to advance their development strategy? What are the key concerns surrounding the issues of IPR for developing countries? What are the specific difficulties they face in intellectual property negotiations? Is intellectual property directly relevant to sustainable development and to the achievement of agreed international development goals? Do they have the capacity, especially the least developed among them, to formulate their negotiating positions and become well-informed negotiating partners? Policy makers need to address these essential questions in order to be able to design IPR laws and policies that best meet the needs of their people and negotiate effectively for future agreements.

The joint UNCTAD-ICTSD Project on Intellectual Property and Sustainable Development was launched in July 2001 precisely to address some of these questions. One of the main objectives has been to facilitate the emergence of a critical mass of well-informed stakeholders in developing countries – including decision-makers, negotiators as well as the private sector and civil society – to enable them to define their own sustainable human development objectives in the field of IPRs, and effectively advance those objectives at the national and international levels.



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A team led by Pedro Roffe (Project Director, UNCTAD-ICTSD) and Ricardo Meléndez-Ortiz (Executive Director, ICTSD), and comprising Christophe Bellman, Marie Chamay, Graham Dutfield, Khalil Hamdani, Assad Omer, Christoph Spennemann, Taffere Tesfachew and David Vivas, has been responsible for the preparation of this work.

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## ACRONYMS & ABBREVIATIONS

ABS	access and benefit-sharing
CBD	Convention on Biological Diversity
CGRFA	Commission on Genetic Resources for Food and Agriculture (formerly CPGR)
CPGR	Commission on Plant Genetic Resources (of the FAO)
DMCA	Digital Millennium Copyright Act (of the United States)
EMR	exclusive marketing right
EPO	European Patent Office
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FDI	foreign direct investment
GATT	General Agreement on Tariffs and Trade
GI	geographical indication
ICT	information and communication technology
ICTSD	International Centre for Trade and Sustainable Development
IMF	International Monetary Fund
IP	Intellectual property
IPR	Intellectual property right
ISP	Internet service provider
ITPGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture (of the FAO)
MTA	material transfer agreement
PBRs	plant breeders' rights
R&D	research and development
TK	traditional knowledge
TNC	transnational corporation
TRIPS	Trade-Related Aspects of Intellectual Property Rights (also a WTO Agreement)
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UPOV	Convention for the Protection of New Varieties of Plants (abbreviation derives from the French title: Union internationale pour la protection des obtentions végétales)
WCT	WIPO Copyright Treaty
WIPO	World Intellectual Property Organization
WPPT	WIPO Performers and Phonograms Treaty
WTO	World Trade Organization

