



**Initiative for Policy Dialogue
Economic Commission for Latin America and the Caribbean**

Task Force on Intellectual Property

Meeting Notes

5 – 7th December 2005

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Intellectual Property Meeting Notes December 5, 2005

Session I: Four Chairs Outline Agenda and Questions To Address

Giovanni Dosi opened the discussion by laying out the critical questions and framing the debates that the taskforce could address in the coming sessions. He began by asking who oversees and what is the governance of the international intellectual property rights regime? It is important to look at IP diagnostically and to ask the correct questions.

In an ideal world, there are no IPRs and innovation is done for enjoyment. This scenario is ideal because it is driven purely by competition. IPR represents a distortion of this ideal; a distortion made in the interest of social welfare. The goal then, is to protect social welfare, and the questions to ask are (1) what is the effect of property rights on the rate of innovation? (2) Does increasing the returns from innovation translate into an increase in the rate of innovation? (3) What effects do different kinds of protection have on different kinds of innovation? (4) From a diagnostic perspective, how does a given IP regime impact access to knowledge? (5) What is the effect of a given IP regime on income distribution?

Susanne Scotchmer pointed out that it is impossible to separate the politics from social aspects of IP. In order to make a social welfare argument for IPRs, you need to determine whose interests you will represent. IP is naturally political and rooting discussions in national interests will change the nature of the debate. This is the reason why we need international institutions to govern and manage an international IP regime.

There are other issues and questions of importance to address. First, there is an absence of discussion on the role that multilateral institutions can play in promoting social welfare through the coordination or governance of an IP regime. The institutions that are focused on IP are not focused on the public domain. Institutions are more concerned about coordinating IP rights, rather than in the interests of the public domain, and this public – private balance within institutions needs to be redressed. Second, IPR policy is an instrument for development, especially given that the cheapest form of foreign aid is not to push ip on developing countries. Knowledge is the easiest thing to put across borders (compared to textiles), so we must address the question of why, in this knowledge economy, do we have an increasing divergence between rich and poor countries?

Jerry Richman, also a chair of the taskforce, framed the debates with a different perspective. He pointed out that the historic mission of GATT was to deregulate the international economy; and asked why are we now re-regulating the international economy via government induced monopolies?

The focus is not just for developing countries. Increasing rents for current innovation may impede future innovation in all economies. This occurs because too many monopolies undermine competition.

The TRIPS agreement is an incipient system for regulating transnational innovation. The formation of TRIPS brings about several critical questions (1) only recently have we begun to understand national systems of innovations. What can we learn from successful domestic systems? (2) And what is the best design for a transnational system of innovation? Will IP protections create barriers to entry? (3) Will they actually encourage development and innovation on a transnational scale or impede it? (4) What effect do IP protections have on other public goods, such as health, education? The representatives of these public goods are never at the table when the IP rules are made. (5) How can states preserve their function of providing public goods in the face of these monopolies?

Knowledge is the most precious public good. Knowledge is both inputs and outputs. The genius of the system was inputs, not immediate outputs. This means the current path is myopic.

Mario Cimoli was the fourth and final chair to outline the important questions the taskforce should address. He noted that developing economies are using one strategy. They are looking for more trade and open markets; emerging market economies are looking for liberalization. And the belief is that knowledge will come with liberalization.

What is important is to push beyond this enormous asymmetry toward a new approach where developing countries can participate in IP discussions with a renewed focus on industrial policy, innovation and technology policy. Mexico exemplifies a country that is not emphasizing technological development. Like so many other developing countries, it is largely constricted to this kind of agreement and to this strategy of liberalization and knowledge acquisition. We need to introduce a new strategy for developing countries and treat the knowledge market much like capital/financial markets.

Session II: The Economics of Intellectual Property Revisited

Giovanni Dosi

The only requirement for innovation is a minimum appropriability mechanism. There are several ways through which innovation can be appropriated - secrecy, product complexity (it takes time to imitate), and via patents. Patents therefore, are redundant, and IP rights slow down the rate of information sharing by retarding the amalgamation of complimentary pieces of information. After a threshold, there is no linear relationship between property rights and innovation. Instead, the rate of innovation depends on the availability of technological opportunities. Innovation in developing countries is slow because technological opportunities are slow. The idea is that patents may not be the correct appropriability mechanism for spurring innovation. It is possible that secrecy is enough.

Susanne Scotchmer

On the issue of IP in the international arena, incentives and politics are inevitably intertwined. We need to take seriously the context in which these discussions are unfolding.

An IP regime serves two purposes. One, in the international arena it is to promote research and development. Two, governments use the regime to promote their own national interests. There are therefore trade-offs that have to be balanced. There are trade-offs between innovation and deadweight loss. Trade-offs between dead weight loss and inefficiency of the public sector (this is underemphasized), especially in developing countries where public sector is heavily invested and very involved.

The political purpose of an IP regime is to collect profits from abroad. Stronger rights in other countries means more profits for domestic firms so that countries will prefer strong rights abroad and weak rights at home. The idea is to collect profits from foreign jurisdictions. At present, 13% of the world's people hold 90% of the world's patents. Almost all patents are issued in Japan, EU, and US. Whatever China and other countries are inventing they are not patenting.

There are three IP regimes throughout three periods of history. First, there was autarky around the 1880s and prior to the Paris convention. Rights were given to domestic inventors, which was a system of reciprocal externalities between sovereignties. For instance, the British and Italians reciprocated on rights given to one another's inventors. These types of exchanges led to national treatment treaties. The idea was that the system was fair. The central defect was that incentives might not have been strong enough.

Looking through this model at the 20th century, we see three large systems; that of the US, EU, and Japan. Most inventors can get their costs covered by one domestic patent. Autarky may not be such a bad system for the modern world, but it is unlikely we will go in that direction.

In the intervening 100 years (post 1880), the idea of national treatment came into play. This meant that what ever rights or benefits you gave to domestic inventors had to be given to foreign inventors. In this system, small countries would sign a treaty and get to patent in larger countries. The small Italian market adds nothing to incentives. There is a race to the bottom, and the best you can do as a small state is to have no property rights, and depend on the larger foreign markets.

In 100 years, bunch of small states did just this. The resulting asymmetry is that big states have tough rights and little states have no rights. This has led big countries leads the effort to harmonization in order to remedy this asymmetry.

In the current system, post TRIPS there is a move toward the harmonization of protections. Harmonization is the heart of the current debate. This the present system, innovative countries and large countries push for stronger protections (In the US can't separate large from innovative). If you are large but not innovative, you don't want stronger protections. If you are small and innovative, like Switzerland and Finland, you are pushing for the strongest of protection. The point is the entire debate is not about efficiency, but about equity and politics.

The conclusion is that conflicts are about economic interests, not efficiency. The question is whether or not efforts for harmonization will swing the pendulum too far, resulting in too much protection. You can't separate incentives without consideration of national politics

Session II: Discussion

Luigi Orsenigo

- What is the link between patents, stronger protection, and innovation?
- Technology is a public good but not a free good. Patents are important in inducing innovation in a handful of industries
- Most arguments for IP are framed not as incentives for innovation but rather as funding for innovation. To what extent do patents create incentives to engage in research and development?
- How much does marginal investment in R&D impact innovation?
- Patents induce markets for technology/knowledge. It is a difference issue for patents to induce incentives for innovation.

Establen Burrone

- The model that Scotchmer lays out focuses on profit flows. What happens if you focus the analysis on knowledge flows?

Susanne Scotchmer

- People argue that patents give you something to sell and this gives you a foundation for transferring knowledge. This argument is not persuasive because demand curves are downward sloping. If something is free, then more people will use and want more of it.

Jamie Love

- Scotchmer presentation assumes that actions taken by US, Switzerland are rational. It is important to understand why USTR pushes rules in WIPO that don't exist in the US.
 - WIPO considers semiconductor regime was a mistake
- Equity – economists should pay more attention to marginal cost pricing
 - Exclusive rights paradigm was the right way to value?
- We should separate the market for innovation from the market for products
 - i.e. find different business models from funding R&D instead of relying on high drug prices
- It is important to question the regime as a whole.

Pedro Roffe

- There has been 100 years of market expansion not only for patents, but also of IP in other areas, such as copyrights. The argument sold to developing countries is that dissemination, innovation and technology come with stronger property rights. Developing countries are paying more royalties to the US.

Keith Maskus Maskus

- Having something in the public domain is not the same as having access to it, especially for developing countries.
- Economists focus too much on patents, but IP is much broader than this.
- Other forms of IP are innovative, such as geographical indication, liability rules, and pricing incentives can be approved on a global scale if international IP is sorted out appropriately.

Jerry Reichman

- The profit motivation should determine how the system works and how countries can do better.
- Historical point – disregards national system and look at big countries. Manufacturers used to rely heavily on secrecy. The information economy generated a market failure with regard to industrial designs. Today's innovation is sequential. Before, secrecy gave lead time (like patents), but this is not true of industrial design today. Now, there is zero lead time and products are duplicated quickly. This poses a question of market failure.

Annalisa Primi

- Patents are relevant to the agents using them.
- Empirical evidence is necessary.

Andres Moncayo

Regarding dissemination, in Latin America you have national learning systems, but not national innovation systems. The question is will IPR increase cost of imitation not innovation. Will the cost of imitation rise?

- There is an asymmetry problem when the cost of litigation becomes higher than the cost of innovation.
- Latin America is transferring from imitation systems to innovation systems. This is a difficult transition and it should be discussed.
- Bilateral and multilateral agreements are at odds, and we must find a way to maintain national flexibilities.
- We need to build balanced institutions, but this is heard when all the on competition policy and IP rights comes from the USA. How do we deal with this?
- In small countries, there is an interest to be a free rider in regards to patents. But for copyrights this incentive changes. In FTAs there are lots of discussions on patents (and a strong lobby), but little discussion on copyrights.

Giovanni Dosi

- You cannot assume that technological knowledge equals information or the ability to access to information. Many developing countries don't have the capability to understand or use technological knowledge.
 - We can't ignore the conditions under which knowledge is captured and used
- The disappearance of lead times (Reichman's point) is an empirical issue
- Increasing knowledge gap is because knowledge is not information.

- The question is how do different IP regimes influence the transfer of information/knowledge?
 - Only 5-6 developing countries are able to replicate drugs. How can we diffuse this information and know-how?

Susanne Scotchmer

- The fundamental question is why the knowledge economy has led to divergence of developing and developed countries?
 - Is there sticky knowledge and accumulative knowledge?
 - Or is it that knowledge grows where it already exists (inertia)
- How can we study the problem?
- Opposing views – Jerry Reichman noted that in modern world, it's easier to free ride inventions. But this is diametric to the idea that knowledge is sticky.

Jerry Reichman

- Japan became the expert on reading patents.
- There is now a design region in Italy, much like Silicon Valley, where lots of companies are sharing employees, and the whole industry is improving as a group without a chamber of commerce. California didn't enforce contracts that limited employee's ability to compete. They created a stickiness of knowledge out of nothing.
- I refuse to believe that developing countries can't do this. Their handicaps are not insuperable
- EU won a case against the US for 301 pressures. Why haven't developing countries gone to the WTO to complain about 301?

Keith Maskus

- We're not empirically informed on how countries collect knowledge.
 - One way is conferences, where PhD's go abroad
 - There are many types of information and technologies, and we can't think in terms of one model.
 - It is not hard to imitate the technologies that Jerry Reichman references, such as music, fashion designs, etc... We're not sure how much learning is established this way.
 - That the IP regime protects publicly funded knowledge with private rights is bizarre. This system will not help diffusion or innovation.
 - Minnesota proposed automatic green cards for PhD students in the US.
 - Is there a competition for resources between developed and developing countries?

Jamie Love

- Nordic countries pay for access to information and it's not a problem because they have money. They also benefit from free information via internet.
- Informal access to information, where employees share information between companies increases innovation

Luis Villarreal

- It would be useful to make studies to see who is benefiting from political gain. In the case of copyright is the author, society, or the industry being protected?
- There is no information on the effects of IP norms, and this should be discussed.
- What are the economic impacts of each type of IP right that can be implemented nationally and internationally
- We need to identify which factors to consider?

Giovanni Dosi

- Referring to Keith Maskus's remarks on knowledge transfer – There are two ways or mechanisms (1) organizational knowledge and (2) people
 - Knowledge is hard to transfer internally within companies. For example, Intel does not know why some of its factories are more successful than others.
 - There is no clear recipe for the transfer of knowledge. This shows that it is crazy to allow a business model to be patented.
 - It is a fundamental research task to learn how knowledge is acquired and reproduced. We may learn that IP is not important. This is a fundamental empirical question.

Alvaro Dias

- There are fundamental asymmetries of power.
- Small countries make bilateral agreements with large countries to get access to markets. When there is 301 pressure developing countries negotiate.
- We should include a chapter on the political economy. Why countries accept FTAs that don't benefit them.

Jerry Reichman

- I endorse Keith Maskus's recommendation. There is not a lot of empirical information on market failures. No cases of developing countries trying to get compulsory licenses or on their refusal to deal in WTO. (Italy – Merk case?)

Andres Moncayo

- We are protecting investments through IP. We are not protecting innovation.
- What should be appropriate? We should protect creative works and original inventions (old IP system)
- We also need to differentiate between developing countries like Brazil versus Ghana. There are three categories;
 - Countries with no demand for IP goods
 - Countries with demand for IP goods but no capabilities
 - Countries with demand for IP goods and that have capabilities

Susanne Scotchmer

- In what ways does IP help development?
 - Give technology that can be used?
 - Give access to innovation and products? (India and software)
 - Exploiting labor is different than diffusing technology

- It's not clear that the free flow of knowledge helps or hurts developing countries, since they have no controls.

Carlos Correa

- Commenting on the role of IP systems on promoting innovation and capabilities in developing countries
 - 1st approach is developing countries prepare under TRIPS as it currently stands
 - 2nd approach is that the system is correct but there are a few things to fix and improve (view of US)
 - 3^{R&D} approach is that current system will not work for developing countries, which need to propose a new model based more on public domain
- Need to discuss which will be the best strategy for developing countries, and what should be the proposal of developing countries looking for a development agenda.

Luigi Orsenigo

- The biotechnology industry exists mainly in the US. How is there concentrated innovation in one country?
- Big pharmaceutical and small biotechnology compares are the strongest supporters of strong IPRS. Why?
 - They fund R&D, but the state could fund much more research.
 - Pharma claims that they translate basic research into drugs. Could this be done in public organizations?
 - What is it that big pharma is really good at?
 - R&D? (public labs are better)
 - Clinical trials? (why not socialize them)
 - Marketing? (marketing is not important)
 - Answer: We are the only type of organization that keeps the whole process together.
 - Think about what a public effort looks like to create an HIV vaccine?
 - Still a big problem with organizing and disseminating information
 - We can use this story to see what ways patents do or don't matter

Sherif Saadallah

- Too much emphasis on the question of patents, and their effect on innovation. IP is much wider than patents, and there are certain sectors in copyright for instance where countries are becoming competitive. These countries are using IPR to their advantage.
- The important question is the outsourcing of innovation. Who owns the knowledge that is outsourced from USA to Asia?
- We should study what is happening in some developing countries and note that they are not all alike.
- Developing countries don't believe that they have everything to lose when it comes to IP. The political reality shows that developing countries have always sacrificed IP because they don't believe they have anything to gain from it. They

give it up to get advantages in other trade sectors, and are not prepared to use the advantages that have been given to them in trade agreements.

- We need to help countries determine what they should give up and what they should pursue based on their capabilities.
- Are other policies in the countries amenable to use of IP? Why would a country cutting its R&D resources pursue a stronger IP system? Or look at why IP has not been useful in developing countries.

Susanne Scotchmer

- There is the issue of externalities. The US funds R&D for rest of world
- IP is a way to repatriate profits
- We don't have the international institutions to agree to cut back on IP rights in deference to the public domain.

Session III: The IP Multilateral Legal Framework: Norms and Standard Settings In Open Economies

Mario Cimoli

Developing countries lost opportunities due to the lack of flexibility in the IPR system, but developing countries also lack the ability to use these flexibilities when they are available. Why are flexibilities not included in these country's strategies? For instance Brazil used compulsory licenses with HIV drugs because they could.

Many think next DOHA meeting will be a failure. We must ask what is the strategy put forth to get countries to use flexibilities such as parallel imports and compulsory licenses?

In bilateral agreements, developing countries pursue the same strategy and get the same results as in multilateral agreements. There is confusion about where the problem lies. Is it in the system or the strategies of the countries? We must remember that bilateral agreements are the strategy of the governments!! The conclusion is that developing countries need to stop focusing on short-term gains.

Jerry Reichman

There are three systems of IP used to produce knowledge, and until recently each system was kept separate. (1) Before the 1980s, it was hard to get patents. Now, we are seeing the Coasian view put into practice where we give everyone strong intellectual property rights. But, the Coase theoretical model has been bad for production of today's most valuable goods. The notion is that clear boundaries allow people to negotiate, but today, most knowledge is based on unclear boundaries. Knowledge is accumulated. The Coase model is artificially separating that which is naturally together.

We need a second tier of intellectual property resounding liability rules. Developing countries should look into this position more carefully, and make more use of utility

models for small scale innovation. They can adopt inventions to local conditions. A liability regime would be better than utility regime.

(3) The Belagio Symposium was successful. It led to WIPO a development agenda. But developing countries need a strategy of their own.

Another set of ideas pointed out the importance of developing countries freeing their IP regimes from their industrial property offices. The issue is not compliance, but rather a strong national innovation system and given legal rules. There is a need for interagency review (This is what stopped the US from pursuing a database treaty) Most developing countries don't have interagency review. For instance, their health ministers are surprised by what trade ministers' advocate and put into agreements.

Why can't we have a worldwide fund to support venture capital in developing countries? Why can't we create a worldwide science foundation much like the US's NIH?

Getting technology has multiplier effects on development, but you have to be able to get the technology! Developing countries need pro-competitive ethos. They need to develop competition policy themselves and they need to strengthen the role that their chambers of commerces play.

Session III: Beyond Trips: Re-Shaping Ip Regimes Through Bilateral Agreements: An Open Discussion

Alvaro Diaz

Developing countries need to get capabilities and diffuse them. The Chilean Minister of Culture is very worried about IP copyrights, while the Ministry of Education is more concerned about diffusion of knowledge. This is a definitely a question of political economy, and it is critical in developing countries. The lack of coordination between agencies hurts country's ability to develop coherent strategy.

In institution building, IP must be balanced with other institutions. Some ideas to consider are a board for IP, more transparency, and strong anti-trust institutions (which is a discussion is just beginning in Latin America). Health institutions must be completely separated from IP procedures because they must defend a public good.

Keith Maskus

There are three relevant issues. (1) There is a special fee imposed on international trademark and patent applications (International funds for technology and science) (2) Increase number of visas of developing country specialists to study in the developed countries. This will permanently increase the transfer technology.

Sisule Musungu

Intellectual property is a real problem in developing countries. Yes, infrastructure is a problem that needs solving, but this is a not a reason to not address the problem of IP. What should be the basis for deciding who sits at the table? What agencies should be

there – Health, IP, and Commerce? And who represents these countries in international meetings?

Susanne Scotchmer

There is also the issue of competition policy. A country growing by producing technology versus a country growing by using foreign technologies will have different competition policy agendas. A strong competition policy may not be in national interest.

Jamie Love

Open source code has been successful and is a good example. The trade system is bad at dealing with the public good aspect of knowledge. In a round of negotiations at the WTO on public goods, offers were made to liberalize sectors of the economy. Instead, offers should be made to protect public goods. We need to ask what are the trade related aspects of public goods.

Luis Villaroel

Competition policy is a powerful way to achieve balance, and China is a good example. We should have a study on IP with respect to sectors. Perhaps we need stronger IP for seeds and weaker IP for health products.

Mario Cimoli

- Not true that constraints on development of capacity are coming from IP system
- There is a problem of capabilities – nobody takes a plane built in Uruguay.
- System does not enforce the creation of capability
- Doha article 7 - not possible to enforce this point (build capacity in developing countries) basically there are articles in agreements that are just not possible to achieve.

Sanya Reid-Smith

- We can look at the example of the bilateral agreements between the US – Australia and US - Singapore.
- You can't compulsory license the know-how, only the product.
- If you expropriate (compulsory license) technology, you need to pay for it. There are no exceptions made for developing countries.

Jerry Reichman

- Regarding competition policy (law), it is urgent to have a worldwide patent evaluation organization working on behalf of developing countries
- We must also stress the importance of inter-agency collaboration
 - This collaboration on a continual basis in national governments, would be a springboard for regional cooperation, and maybe even result in a regional plan
 - Inter-agency groups could actually assess the costs and benefits of IP regimes
- We should suggest that developing countries call for a moratorium on new IP treaties and agreements. They are already in the red trying to implement TRIPS.

Pedro Roffee

- Latin America has a reserved view of multilateralism, so TRIPS was a fundamental change.
- Countries are making concessions in IP for open market access.
- What has happened in Latin American? There are four models:
 - (1) Chile and Mexico with the EU
 - Emphasis on geographical indications, data protection, highest standards
 - (2) Agreements with the US
 - Comprehensive approach to IP
 - (3) Agreements with Canada
 - (4) Agreements with Japan, Korea
 - Not close to CAFTA or the EU model
 - Taiwan – Panama agreement pays particular attention to the recognition of genetic resources
- Features of US trade agreements?
 - All agreements are administrated by WIPO
 - Expansion of material included, exporting the copyright model and emphasis on protection
 - Encouragement of protection of life forms
 - Reliance on policy instruments like parallel imports
 - Compliance and enforcement
 - Great protection of pharmaceutical products
 - Adjustment of terms of protection
 - Exclusivity in data protection
 - Linkage between patent rights and globalization of products
 - Countries signing agreements with the US (such as Chile) institute changes in domestic law, but the US will not allow an FTA to supplant its own domestic or state law
 - Congress of US is free to change US law

Andres Moncayo

- TRIPS plus means there are provisions for IP beyond original provisions in TRIPS.
- Many TRIPS flexibilities or options are omitted
 - For example, Morocco agreed to patent plants and animals
- Why is this possible?
 - TRIPS allows countries to extend protections through national legislation and bilateral agreements unless such protection violates TRIPS
- The effect is that bilateral treaties make multilateral discussions in WIPO and elsewhere more difficult
- Connections
 - TRIPS governed by MFN, and if you don't ratify treaties, MFN allows a country to still benefit
- Non derogation clause –

- FTA should not be an excuse to bypass existing multilateral provisions, but this clause is ambiguous and difficult to implement.
- Allows countries to say to bilateral partners that they cannot derogate the rights that exist under multilateral treaties

Alvaro Diaz

- I'm not happy with Chile having to negotiate an IP chapter. It was a cost Chile had to bear to get an FTA with US. The goal was to minimize this cost.
- Process of negotiations had two chapters; patents and copyright
- The Public cared about patents and not copyrights because in patents were linked to health, the national generic industry, and multinationals
- Copyright was the more relevant issue, where Chile's cultural industry needed to confront digital pirates
- Copyright negotiations were harder than patent negotiations
- Plant animal patent protection research was completed after the FTA was signed with the US. The result was that Congress banned patenting life forms.
- These issues were very finely discussed in the treaty and in the law six months after treaty was approved
- Not sure what the process for CAFTA countries will be, but Chile's process is important to note

Jamie Love

- Pharmaceutical clinical trials
 - Information is a public good
 - Trails are a risky business venture
 - Data are protected and marketing is built in
- US negotiators are corrupt and not looking out for public interest
- Need to communicate with American public above the head of negotiators

Luis Villaroel

- The damaging clause for copyright is in clause for national treatment, which is a WIPO clause

Andres Moncayo

- If developing countries keep signing bilateral agreements where they lose comparative advantage, what is left are bilateral IP concessions
- The full use of flexibilities is one way to enable developing countries
- Countries must play with TRIPS and TRIPS plus standards

Intellectual Property Meeting Notes December 6, 2005

Session I: Review of Discussions: What's Next For This Task Force?

Questions on the table

1. What is the point of the taskforce report and what are the specific proposals to be covered?

Contributions

- (Jerry Reichman) We should focus on economic analysis instead of legal analysis, but then how should we organize it?
- (Sanya Reid-Smith) What is the effect that Joe Stiglitz adds? How will this report be different from the UK report?
- (Sisule Musungu) We could focus on the issues on implementing the TRIPS agreement. There is not enough literature dealing with the technology changes. Regarding the development challenges put forward in WIPO;
 - To determine the rules, we must consider the development impact
 - How do you assure a political impact?
 - Should we aim at a single final product or have a few intermediate products?
- (Keith Maskus) Economic and empirical analysis means doing country and firm level surveys, and the only institutions that have the requisite resources are the World Bank.
 - The UK commission report is backwards looking. This report says what could be good or bad.
 - If you really wanted to implement a pro-development agenda, how would you go about thinking about the question?
- (Alvaro Diaz) There are two things to consider, each with different research
 - What is and what will be new IPR regime considering current multi and bi lateral treaties
 - A second approach to consider the trend to build up a new kind of regime. Many countries are signing bi-laterals and under these circumstances, what are the best public policies?
 - The interagency coordination problem is common to all developing countries and it is necessary to do more research on the economics of intellectual property rights
- (Andres Moncayo)
 - A book should consider the development impacts of IPR.
 - Work could be done on a pro-development agenda or strategy that considers how to use IP as a beneficial development tool
 - The book should contain economic research and analytical tools for policymakers
 - It should also be focused on regional problems
 - Finally it should cover how solutions can translate into a legal framework, maybe even a proposal

- (Pedro Roffe) South Center and similar institutions are doing good work in this area. The value-add of this taskforce could be to look at alternatives to the current IP system.
 - Competition policy may be one area of focus
- (Luis Villarroel)
 - The book should include a chapter on technical cooperation agreements
- (Sanya Reid-Smith)
 - US fast track authority runs out in 2007
 - Are we influencing developed or developing countries?
 - What about traditional knowledge and genetic resources? This topic was missing from yesterday's debate?
 - Should we focus on thematic or country (Which countries) issues?
 - How far ahead are we looking in-terms of alternative policies?
- (Mario Cimoli)
 - It is not important to be behind the political agenda, because it moves and changes so quickly
 - It is better to have substantive argument on each issue - bilateral agreements and a mechanism to propose for technological transfers
- (Jerry Reichman)
 - We should take the new regime as a given
 - What are the legal and economic consequences of the new regime?
 - How can countries be pro-development or pro-competitive?
 - We could do a law and economic analysis of the situation as it stands and look into what alternative options are available
 - We could focus on evidence based IP regimes
 - It would be a mistake to only focus on developing countries because appropriation and flaws in the US patents system have big impacts on all countries
- (Keith Maskus)
 - We should narrow the focus. How is it that developing countries actually learn from developed countries?
 - Patent citations, article citation, university transfers etc...
 - We need to answer these prior questions before making a prescription for the world system
- (Suzanne Scotchmer)
 - Keith Maskus is saying we can't generalize or assume how developing countries learn
 - We shouldn't focus so much on patents
 - We're not in a position to make policy prescriptions
 - We should provide information to people who make policy prescriptions
 - What are the mechanisms developing countries can learn versus how they can exploit learning to grow?
 - Historically, what countries have assumed developed countries' technology versus countries that have used the institutions of the developed world to grow
 - Two means of development

- (1) Find mechanisms to help developing countries assume technologies of developed countries
 - (2) Find mechanisms for developing countries to use institutions (market access, innovation structures)
 - We don't know which is a development tool
- (Giovanni Dosi) There is no case where a country in the catching up process does not borrow technology. There is no case where IPR in the beginning phases of the catching up process worked in favor of development
- (Susanne Scotchmer)
 - What about the case of Israel?
 - What is the natural path? How do you build a regime that recognizes a natural path and distinguish where a country is on that path?
- (Jerry Reichman)
 - The international regime is different now, and we can't wait for economists to say what we should have done (prescriptions) ten years from now. We have to give legal advice to these countries. The taskforce should give economically informed legal advice.
- (Susanne Scotchmer) That is advocacy not research.
- (Ariel Schwartz)
 - IPD doesn't typically offer policy advice in a general. Our goal is to lay out the policy alternatives that exist or could exist, and outline the tradeoffs associated with each alternative, so that a policymaker might decide what might apply to his country's particular situation.
- (Luis Villaroel)
 - We should make a study or a model that can allow a government to measure its decisions.
- (Sisule Musungu)
 - I agree with Ariel. We won't finish all the research we need to deal with the issues, and developing countries need those type of options. One of major challenges we will face is what is the system that we can use to help the countries that are being left behind? What do we do when China, India, and Brazil do what the US, UK, and Japan are doing?
- (Carlos Pacheco)
 - I agree there are two main fields; negotiations and legal
 - What is the role of IP in development?
 - I agree with Mario Cimoli in that politics will always change. An agenda for development is a political approach. What does it mean for national policies for IP?
 - What is the role of IP in affecting national technology policies?
 - What is the role of IP in the new context?
 - It's not clear how institutions should be designed to deal with new a new IP system? The old institutions have not changed or been updated.
- (Giovanni Dosi)
 - Let us recall the issues we discussed yesterday;
 - (1) The relationship between IPR and the accumulation of technical capabilities in developing countries

- What is the relationship between IPR and innovation?
 - We might say that IPR is not important; that IPR is secondary in the accumulation of knowledge and technology - This could be a major theme guiding our work
 - (2) Distributional issue (Susan's idea): There is a distributional issue within developed countries and between developed and developing countries.
 - The sectoral impact of IPR will differ enormously and the taskforce has the people evaluate sectoral aspects
 - In terms of policy prescriptions, we want to explore different scenarios and forms of governance
- (Jamie Love)
 - It is good to come out with advice for countries to look at even if they can't implement it
 - Countries are implementing IP systems designed in US and EU, but these systems are not static. People in the north are always trying to remake the IP system
 - It is better to think what will work for developing countries
 - It is more interesting to look at systems more administratively in tune with their capacities
- (Jerry Reichman)
 - There are two lessons. When you think about policy options, need to think differently for LDCs, but be careful not think about world policy only from perspective of developing countries.
 - We can't act as if LDCs were the world
- (Luigi Orsenigo)
 - The relationships are between incentives and capabilities and innovation
 - We can't do a lot of new research but perhaps, we can conceptually reframe what we know and what we don't know. This would be a good contribution to policy debate
 - A second thread to explore is that IPRs are not only incentives. Markets are forms of organizing knowledge and there are barriers to entry. This helps us make the distinction between poor and rich countries.
 - Incentives for innovation and mechanisms that promote learning in poor countries are access to knowledge.
 - The system is not extremely viable in the north or south. There are two faces of the same problem; what is happening in the north and what is happening in the south
- (Alvaro Diaz)
 - IPR innovation needs to be explored in developed and developing countries (like Giovanni said)
 - IPR not relevant in Chile for the expansion of high-tech natural resource exports such as fruit, mining, and fisheries. IPR was not relevant to the process of learning in and expansion of these various sectors.
 - IPR is relevant to trademarks, geographical indications (negotiations with EU), plant rights, and copyright.

- IPR should be analyzed in its various forms. We are making a transition to a new IPR regime, and Chile is trying to advance to a new stage. R&D becomes more critical for the development of economy. In Brazil IPR was not relevant for industrial development, except for a couple of sectors.
- IPR becomes important when countries transition from learning systems to innovation systems. Exploring these transitions is very important
- (Mario Cimoli)
 - Technological regimes and the diffusion of capabilities should be the focus of one of our studies
 - There are a couple of ways we could organize our research
 - (1) Historical perspectives. What countries did to develop industrial capabilities is useful. Its obviously not just IPR (china, India, etc..) but also active industrial policy
 - We can categorize the historical path of countries
 - There is a continuum of different IPR regimes
 - Sectoral analysis and differences are very important. An analysis about pharmaceuticals is critical.
 - The idea of different IPR regimes for different countries and sectors has to be done. We have to chose sectors such as pharma and IT.
- (Andres Moncayo)
 - I agree with Mario Cimoli on the importance of sectoral analysis
 - I agree with Susan that we should not give advice, but we should provide research materials
 - We should think that there is a system in place and whatever comes out of our studies should be coordinated with this system and with reality. Think about the interaction of alternative policies and existing regimes.
- (Jerry Reichman)
 - I agree that when we look at policy options for innovation we need to consider the current legal regime. There is an interrelation between law and economics that won't go away.
- (Susanne Scotchmer)
 - Chile's scenario (development through natural resource) is so different from Korea, for instance, which developed on IPR based industries. Taiwan and Korea depended heavily on the IPR systems of developed world.
 - Can we distinguish between resource based and not non-resourced based countries as a way to cut the issues?
 - Another way to look at things is through public funds. How much of R&D is public monies? There is a huge debate on how to deal with research that comes from public effort.
 - In EU, the percent of R&D funded publicly is 40-50%
 - In Latin America, the percent of R&D funded publicly is almost 2/3
 - This makes treatment of public sector IPR a huge issue that we haven't talked about
 - The US exports the idea that this publicly funded research should be patented

- Since so much of Latin American research is publicly funded, we should really ask what is the treatment of these research outputs? Should they be put in the public domain?
- (Sanya Reid-Smith)
 - There are three themes coming through
 - (1) Explain to countries the costs of the current system, the costs of not implementing parallel imports and other flexibilities, and the costs to their health system
 - (2) Look into ways to get R&D, innovation and industrial development through sectoral analysis
 - (3) Conduct a longer term analysis of options where we would re-think the system. Maybe an R&D treaty and options for reform.
- (Keith Maskus)
 - Global governance and knowledge goods get into issues on how TRIPS should be revised.
 - Regarding market failures, externalities, and political market failures and we should ask the question if TRIPS meets these market failures correctly.
- (Giovanni Dosi)
 - I agree with you. A part of industrial policy tries to reassess the infant industry argument; how to balance infant industry protection with rent seeking behavior.
 - An assessment of the appropriability regime and public funding is fundamental
 - There is too much emphasis on the output of science as pure information.

Session II: WIPO; An Informal Discussion

Introduction of the Session by Giovanni Dosi - A review of task force goals and general ideas put forth for inclusion in a taskforce publication

- An analysis of the IP regime in terms of its effect on technological learning in developing countries
 - How does the IPR shape the abilities and constraints of local actors to accumulate local knowledge
 - A symmetrical question is does an IPR affect innovation in developed countries
 - IPR performs very different functions such as serving as a barrier to entry and creating a market for technologies. What are the consequences on the diffusion of technology?
 - Disentangle sectors and IPR (different mechanisms of protection have different impacts on different activities)
- What are the effects of IPR on income distribution in developed and developing countries?
 - There are many ideas, but very little measurement and evidence
 - We need to distinguish between level of development in countries
 - We need to distinguish between the pattern of development (resource or knowledge base) in countries.
- These are the issues we will research in the coming months. We intend to identify policy options and explore different policy options.

WIPO provides a welcome and introduction ~ Sherif Saadallah

- WIPO remains responsible for IP, but it is not responsible for creating the TRIPS agreement. WIPO was given the task of helping countries apply the TRIPS agreement.
- Often, the ills of the IP system are attributed to WIPO. There should be flexibilities, especially because the countries do not know how to negotiate.
- WIPO will continue to give technical assistance, a program that has helped countries. WIPO has a demand driven system.
- WIPO serves as a punching bag for TRIPS, an agreement that WIPO cannot interpret, but can only help (often in confidence) developing countries to implement.
- WIPO would like to continue to be a negotiating forum because developing countries must have a forum to discuss IP issues.
- Blocking norm setting in WIPO prevents countries from negotiating.
 - We insist that negotiations should continue, and hopefully through negotiations, countries will make better agreements.
- On development
 - We believe that all developing countries have assets that should be protected by IPR. We are working to identify along with developing countries which are their productive sectors and how they can benefit from IP protection. Cultural industries are a good example.

- It would be naive to think we can roll back the IP system. TRIPS is not the last of the agreements.
- Policy options for developing countries should consider the situation in which these countries have to negotiate. Most developing countries believe they have nothing to gain from IP and their private sectors believe the same thing.
- The way forward is to empower countries to use the IP system in the best possible way.
- It might be useful to add the following areas to the research agenda:
 - IPR and development is a just requirement. We would be happy if TRIPS and not TRIPS plus stood.
 - Patents are not the most important area for developing countries. There are other areas where developing countries can be competitive, such as cultural rights.
- It is important that developing countries feel they have something to gain from IP. The challenge is to make them believe in the IP system.
- We assure you always, that WIPO is pleased to cooperate and collaborate with this task force, including joint research and studies. We would like to stay informed of the taskforce's activities.

Questions addressed to WIPO and Responses

- (Jerry Reichman)
 - Your defense of the technical assistance (TA) program is questionable. The program lacks transparency, balance, etc... If you don't admit there is a problem with the program, you can't do the other good things you are trying to achieve. The TA program has zero credibility in the world.
 - The issue burning in the US is the protection of technology measures. WIPO copyright treaty was a great success and is an example of the good things coming out of WIPO. This agreement had strong public interest provisions included. Are you advising developing countries to use the privilege clause in this treaty?
 - Regarding the negotiation of standards for R&D in treaties; if you don't go the bilateral route, you are going to get clobbered. Regarding a patent harmonization treaty; there would be an imposition of American standards for R&D, which is not supported in America or anywhere else. Where is there evidence of support for broadcasting treaty?
 - There have been important contributions from open source and other alternative uses of IP rights. WIPO refused to host a conference on open source. Would they consider doing this now?
- (Pedro Roffe)
 - I don't see the development agenda as a criticism to WIPO. What is your sincere view on how you see this process moving forward?
- (Sisule Musungu)
 - The question of WIPO is one of credibility.
 - Substantive treaties have gone through a turbulent time. They started with developing country proposals. They were told that those proposals didn't belong to the treaty. Countries said WIPO cannot refuse to put proposals on

table, even if they are misguided. Japan and the US proposals were put on the table. The point is that the process excluded developing countries.

- WIPO has document on its website that says it meets to discuss TRIPS and public health. There is a perception problem.
- (Jamie Love)
 - I have reservations about the process. WIPO is accused by developing countries for going outside channels to undermine Geneva delegates. For example on the broadcast treaty and the Casablanca meeting.
 - There are benefits and costs of IP regimes, and we need a cost benefit analysis. Maybe a less costly regime could achieve the same results.
- (Mario Cimoli)
 - If a country can sign an agreement with bad IP, why can't they demand technological assistance that works for developing countries? The UN has a nepotism problem that keeps it from meeting this demand.
 - The question is how to combine the demand side for technological assistance with the education position of UN on these issues.
 - On the development agenda, countries and strategies need to be well coordinated. Many Latin Americas don't have the money to increase expenditure on R&D. This could be opportunity for technical assistance

WIPO responds: Sherif Saadallah

- I disagree with Jerry Reichman that TA has zero credibility. Maybe for some countries but not for Arab countries. Countries are coming and asking more of the program. Countries criticize the program, but then ask for more. There is no sincere or honest effort to change the program. Nobody has ever decided to make substantive comments on how to change TA program. Member states have to decide to change the program, and the TA program was just approved by member states in last agenda meeting. Remember that anything done in countries was done at the request of member states.
- On flexibilities
 - It is not true that WIPO hasn't given advice on flexibilities. WIPO is willing to make public the advice its gives to member states, but the member states don't want it on record that they were given advice and ignored it
- On negotiations and standards
 - It is not WIPO negotiating with the secretariat. Developing countries have the capability to make and negotiate proposals.
- On open source
 - I didn't know about it or if what was said was true. We are not going to shying away from dealing with any public issue.
- Responding to Pedro Roffee
 - The development agenda is a good idea, and the secretariat is not boycotting it. There are multiple proposals (Brazil & Argentina, along with Arab countries, and a proposal from all of Africa). There are 40 proposals on the table for the next meeting in February.
- WIPO and credibility

- If treaties stop, it does not matter. WIPO doesn't crumble because member states are doing the negotiations themselves.
- Responding to Jaime Love
 - WIPO organized a meeting with NGOs on 15 September 2005 to discuss their concerns and Love didn't attend. You cannot argue that WIPO is not open and transparent.
- What is continually difficult is the balance between a demand driven organization and what the organization thinks need to be done.

Session with Task Force Chairs

Task Force leaders Giovanni Dosi, Mario Cimoli, Keith Maskus, Jerry Reichman and Suzanne Scotchmer undertook this discussion with Ariel Schwartz and Lauren Anderson of the Initiative for Policy Dialogue to determine what progress was made during the previous day and a half in determining what sort of value added this group can contribute to the current debate, and what were the next steps moving forward. The second part of the discussion is focused on what a book outline might look like.

Jerry Reichman liked the framework of the meeting, which focused on policy options for innovation in developing countries instead of solely focusing on intellectual property. This group's current (and future) output isn't (and won't be) like the UK report, which is backward-looking. At this meeting, there was recognition that the new regime is here, it's not going away, and so the next step is to determine how we can live with it, with an emphasis on innovation, tradeoffs, and positive aspects. What happens if India, China and Brazil become friends of intellectual property instead of enemies? Let's bring in an analysis of intellectual property as an enabler or a blocker.

Suzanne Scotchmer: We can't avoid some parts of the zero-sum nature of the policy debate. There are distributional effects of intellectual property. Let's think about focusing on how to balance that.

Giovanni Dosi: There are two important issues here.

- (1) IPR knowledge creation/innovation
- (2) IPR and income distribution

Keith Maskus: There's been an experiment to address the charge that TRIPS was an instrument of rent-seeking: Given the current distribution of patent applications, layer the TRIPS patent regime into it. Assume zero innovation.

Jerry Reichman: The person who conducted that experiment was only looking at patents, and he's therefore probably underestimated the effects.

Suzanne Scotchmer: Maybe we should pose the question: Can new innovation (on net) hurt developing countries?

Keith Maskus: We should talk about what does happen in successful and unsuccessful countries.

Jerry Reichman: If you want history, **Dick Nelson** could write up the lessons learned.

Mario Cimoli and Giovanni Dosi: This should be related to intellectual property rights: long term lessons between copyright and catching up.

Keith Maskus: Bob Evans, Larry Westfall did this in the Handbook of Development Economics. It mostly focused on agriculture.

Suzanne Scotchmer: We should think about doing a case study of Taiwan.

Keith Maskus: There are already hundreds of studies at all the big institutions. But they don't look at many kinds of protection. For example in the Southeast or East Asian models, its not intellectual property that's interesting, but some other proprietary, exclusive rights.

Mario Cimoli: Let's think about doing a historical taxonomy: If a country had developed some capabilities.

Jerry Reichman: Japan is a case study for the utility model.

Giovanni Dosi: There are lots of good case studies: Japan, Korea, India (for pharmaceuticals and software) Brazil, Bangladesh (for garments)

Maybe we should write a comparison on the effects of innovation regimes in the developed world versus the less developed world.

Jerry Reichman: If we could get the testimony of individuals, that would raise the tensions between what could be happening in development.

Keith Maskus: In structuring the economy and regulatory environment, countries have lots of goals in mind: reorganizing the economy, acquiring advanced technology, innovation, adaption. Let's analyze the role of intellectual property as a means of achieving these goals.

One Proposal:

Part 1:

1. A history of IP regime (crisp) (Nelson)
2. IP regime and technological catching up
3. IP regime and innovation (comparative view)
4. More specific topic: emergence of market for technology and its limits
5. Address issue of IPR regimes and income/rent distribution

Part 2: The current environment:

1. Detailed description of the current regime
2. IPR and mechanisms of technology transfer now (Keith a candidate). Contemporary TRIPS and post-TRIPS regime (opportunity constraints, etc)
3. The constraints and opportunities for production capacity in TRIPS
4. IT
5. Biotech
6. Pharma

7. Machine tools or textiles. Traditional Industry

Regional perspective

a.b.c.d.

Part 3: Options for institutional and policy reform

1. Science, Science appropriation, international transfer of scientific knowledge. Implications of IPR on publicly funded research
2. Obstacles and road blocks
3. Traditional knowledge

Scotchmer: I think we might focus on foreign direct investment and its importance as an instrument to make economies grow and create innovative infrastructure. A good case study might be rent seeking in Brazil.

Jerry: We should add new systems, such as health.

Mario: Or a section on TRIPs flexibilities.

Jerry: Let's talk about where we are now and what are the problems that we face

Keith Maskus:

Our overarching theme should be IPR as a tool of economic development. The book should have an international dimension, and discuss the conflicts between the developed world and less developed countries; the role of public sector; the role and weight of intellectual property rights in less developed countries.

Let's discuss these questions from the perspective of a

1. Finance minister;
2. Health minister;
3. Less developed country;
4. R&D sponsors;
5. A business software alliance

We should put it together as a social welfare calculation. What would this look like?

Final Goals and Deadlines

Chairs agreed to split into three groups, and each group write an outline of what a book might look like based on the following topics. Each will write a cover page discussing the audience who you expect this book will (or should) reach and impact it will have.

The assignments were as follows:

Group 1: Maskus, Dosi, and Cimoli: IPR and innovation, knowledge and technology transfer.

Group 2: Suzanne Scotchmer : IPR income distribution, political economy, rent seeking distributional issues.

Group 3: Jerry Reichman: Institutional arrangement, legal structure, and constraints and opportunities for development.

Task Force Participant List

Name/Title	Institution	Position/Program
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Diaz, Alvaro <i>Regional Adviser</i>	ECLAC Brasilia	Participant <i>Intellectual Property Program</i>
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Love, James <i>Consumer Project on Technology</i>	Consumer Project on Technology	Task Force Member <i>Intellectual Property Program</i>
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