

Chapter 4

Doing It Different: Shaping African Knowledge Society under the Influence of Bilateral Intellectual Property Standards

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ABSTRACT

This chapter highlights the current developments in the area of intellectual property having direct consequence for the prospects of Africa's knowledge society. Even though African countries, especially the Least Developed Countries (LDCs), have not yet faced pressure from the EU, US, and EFTA for higher intellectual property standards, the situation may change soon with the imminent deadline for conclusion of Economic Partnership Agreements in 2014, the lapse of Africa Growth and Opportunities Act in 2015, and the expiry of the Cotonou Agreement in 2020. African countries will be well advised to decouple trade and intellectual property issues by promoting interregional trade or trade with other developing countries that do not demand TRIPS-Plus protection. They must also negotiate intellectual property within the ambit of the WTO.

INTRODUCTION

International trade has witnessed phenomenal growth in the post World War II period. The convergence of political as well as economic interests of the nations of the world resulted in the creation of the United Nations, the Bretton Woods Institutions and the General Agreement on Trade and Tariffs, which, in turn, ushered an era

of unprecedented globalization. This globalization sustained various political and economic shocks over the last seventy years and gained momentum with the technological revolution towards the end of the twenty-first century and the liberalization of trade and capital markets (World Bank, 2000).

Globalization has been defined as an integration of national economies into a single, borderless global economy (Korten, 2001). According to

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another definition globalization is 'the growing interdependence of countries resulting from the increasing integration of trade, finance, people, and ideas in one global marketplace' (World Bank, 2000, p.66). Thus it is, generally, agreed that globalization is the major force shaping the future of countries and that of the global economy. This interaction presents the world not only with new opportunities but also with novel and previously unknown problems. Taking stock of such issues is not warranted here, nevertheless, it must be mentioned that globalization today requires and authorizes the re-casting of international law toward this new model of global society (Garcia, 2005).

In this new global society, intellectual property laws and knowledge management policies are perceived to be playing an important role, especially with the advent of sophisticated technology (Yu, 2007). One aim of intellectual property legislation is to establish a system of property rights to enhance innovation, incentivize creativity, and enable the distribution of ideas, knowledge and technology. As knowledge and ideas cannot be constrained within geographical borders because of their inherent non-excludable nature, standards to protect IPRs have also been set on the international level. However, historically the issues related to intellectual property have been dealt with in standalone treaties outside the realm of trade.¹ It was only with the advent of the TRIPS Agreement that a nexus between intellectual property and trade was explicitly realized.

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) is one of the three main agreements that came into existence at the end of the Uruguay Round of multilateral trade negotiations.² Apart from holding a special place in international intellectual property agreements because of creating the intellectual property-trade relationship, TRIPS Agreement is unique for several reasons. TRIPS not only provided for new substantial standards in this field, it also subjected all WTO members to various provisions of earlier intellectual property

treaties such as Paris, Berne and Rome Conventions (Article 2 TRIPS) without requiring them to join these treaties. It introduced the concept of Most-Favored-Nation (Article 4 TRIPS) requiring immediate and unconditional extension to nationals of all members states, any favor or advantage granted to the nationals of any country. It introduced minimum standards of intellectual property enforcement on the international level (Articles 41-61 TRIPS), a crucial area missing from earlier treaties. Another major area lacking in previous treaties was the mechanism for settlement of intellectual property related disputes. TRIPS Agreement not only filled this gap (Articles 63-64 TRIPS), but in doing so it created the ultimate relationship between intellectual property and trade: any Member who would not fulfill its TRIPS obligations could be subject to dispute settlement rules of the WTO. Under this relief, other Members could suspend their obligations vis-à-vis the non-obliging Member both under TRIPS and possibly other WTO Agreements.

On the other hand, as the goal of TRIPS Agreement is to promote technological innovation and dissemination of technology for the mutual advantage of producers and users and create a balance of rights and access to the products protected by intellectual property (Article 7 TRIPS) TRIPS provisions allow ample room for interpretation even in the presence of binding higher standards as compared to what existed before. The language of TRIPS Agreement permits consideration of national priorities of developing and the least developed countries in implementing the provisions in the national legal order. These countries were also permitted to defer the implementation of substantial provisions for a substantial period of time (Articles 65-66 TRIPS).

Nonetheless, the developed countries that pushed for inclusion of intellectual property on the WTO agenda in the first place started considering TRIPS standards as not meeting their expectations. Hence, they initiated negotiation of higher intellectual property standards and curtailing TRIPS

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