Modernization of Intellectual Property Legislation and Administration in the Context of TRIPS

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The work involved in the modernization of legislation and administration in the context of TRIPS is vast. This paper considers some options and alternatives for modernization of national intellectual property legislation and administration. The technical and financial cooperation of developed country members in this process of modernization of developing and least developed country members is desired.

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) is a wide-ranging document. It deals with the following areas of intellectual property:


The provisions in relation to enforcement are new. Taken together, they provide, in broad terms, for the important aspects in

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relation to enforcement, i.e. fair and equitable civil, criminal and administrative procedures, appropriate remedies, provisional measures and border measures.

Modernization of Legislation

(a) Acts and Regulations

The work involved in the modernization of legislation is complex, wide-ranging and time-consuming. The work would vary from country to country. However, some generally common steps could be spelt out. The relevant conventions and the TRIPS provisions for each area of intellectual property, say, copyright and related rights, would have to be examined to see what is required by them. A comparison would then be done with the domestic legislation to see which areas would have to be modified. It may be that in some countries changes to more than one legislation may be necessary.

It is not always clear what changes are to be made. This is because very often one has to interpret how TRIPS Agreement is to be implemented in domestic legislation. Sometimes reference to the legislation of other countries which have implemented the TRIPS Agreement may be of assistance.

As regards most countries there would be a number of ministries, agencies and domestic groups which would have an interest in the legislation. The formation of a working group comprising appropriate representatives may be necessary to work out the changes to legislation.

The same steps as indicated above can be followed for each area of intellectual property rights dealt with by TRIPS.

Once the parent legislation is resolved, it would be necessary to work out detailed regulations to implement the parent legislation. Examples are copyright regulations, patent regulations, trademarks regulations.

(b) Court Procedures

It may or may not be necessary to make appropriate changes to the rules of court.

Changes in Administration

(a) Structures and Procedures

The changes in relation to administration, in the context of TRIPS, is likely to involve the following bodies:

(i) Copyright offices; (ii) Registry of patents, trademarks and designs; (iii) Agencies dealing with geographical indications and integrated circuits, if these are not dealt with by the same registries as that dealing with patents and trademarks;

(iv) Intellectual property enforcement agencies/police; and (v) Customs.

Each body would have to consider its new role in the light of TRIPS and bring about the changes necessary to conform with TRIPS. The changes involved may relate to:

(i) Structure; and (ii) Procedures.

(b) Manpower Requirements

In the event that the changes involve additional staff these would have to be recruited.

(c) Training

It would be necessary to provide training to enforcement officers, custom officers, intellectual property registry staff and judges/magistrates.
Technical Cooperation

It is certain from the above that the work involved in the modernization of legislation and administration in the context of TRIPS is vast. Not all countries have the requisite resources to handle the matter. This is especially so in the case of the developing and the least developed states.

Seminars, symposia and training courses have been organized by WIPO/some countries to assist the developing countries to understand their obligations under TRIPS so that they may implement it. A number of countries have also been assisted in modernizing their intellectual property offices.

The difficulties involved in the implementation of TRIPS were recognized even whilst the Agreement was being drafted. Article 67 of TRIPS provides for technical and financial cooperation for developing and least developed country members from developed country members. Such cooperation is to include assistance in the preparation of laws and regulations and support regarding the establishment of domestic offices and agencies and training of personnel.