

Education, Enforcement, and a Global Patent Regime?

A REPORT FOR ASIAN FORUM JAPAN

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2006 so far has proved to be a significant year for U.S. cooperation internationally on intellectual property (IP) issues. On March 2, President George W. Bush and Prime Minister Manmohan Singh agreed that the United States and India will work together “to promote innovation, creativity and technological advancement by providing a vibrant intellectual property rights regime, and to cooperate in the field of intellectual property rights to include capacity building activities, human resource development, and public awareness programs.” Meanwhile, on March 30, 2006, the U.S. and Japanese governments announced expanded bilateral cooperation on the protection and enforcement of intellectual property rights (IPR). Highlights of this new agreement include increasing assistance and education

for small- and medium-sized enterprises; sharing information on IPR enforcement activities; strengthening technical assistance to third countries; and streamlining the patent process.

Intellectual property protection and stopping the trade in fake and counterfeit goods is not only an economic issue, but also a public health and safety—and even cultural—concern. According to the World Bank’s *Global Economic Prospects* Report of 2002, “across the range of income levels, intellectual property rights (IPR) are associated with greater trade and foreign direct investment flows, which in turn translate into faster rates of economic growth.” Strong intellectual property standards foster economic growth, provide incentives for technological and artistic innovation, and attract investment that creates new jobs and op-

portunities. Weak intellectual property standards, on the other hand, undermine the competitiveness of innovative companies, damage the livelihoods of creative inventors and artists—the cultural heart of a country—and threaten the welfare of consumers and workers.

RAISING PUBLIC AWARENESS

The March 2006 U.S.-India Joint Statement of President Bush and Prime Minister Singh places a clear emphasis on the importance of IP education, which includes capacity building activities, human resource development and public awareness programs. Greater awareness at both the governmental and private/corporate levels of the negative ramifications of IPR violations is needed around the world, as are proper protective measures for IPR. Awareness also plays an important role because some people may not even be aware of the difference between original and pirated goods.

In India, the Business Software Alliance (BSA) and National Association of Software & Services Companies (NASSCOM) have been helping software resellers to educate customers and corporations about the negative impacts of piracy. In 2005 the two organizations announced the launch of a new toll-free anti-piracy hotline in India, with rewards possible for company whistleblowers. To help businesses understand the damaging effects of piracy and under licensing, BSA and NASSCOM will also be launching anti-piracy marketing campaigns, including seminars organized in conjunction with trade associations, newsletters, print advertisements in local dailies, and radio announcements. In the United States, in October 2004 the Bush administration announced the start of a Strategy Targeting Organized Piracy (STOP!) initiative. As part of this program, the government maintains a web site and employs a toll-free number to report intellectual-property violations. In

another attempt at raising public awareness, in the United States DVD viewers are frequently greeted with an anti-piracy public-service message at the outset of their films: “Would you steal a handbag? Would you steal a car? ... Would you steal a movie? Downloading is stealing!”

ENFORCEMENT AND TRAINING

Enforcement also plays an important role in education. In India, copyright laws and the enforcement system are weak. Piracy of copyrighted works, particularly movies, books, software, and cable signals, remains widespread. Improvements in enforcement are most needed in the areas of border protection to prevent the transit of counterfeit and pirated goods, in police action against pirates and counterfeiters, and in legal rulings that result in convictions for copyright and trademark infringement and the imposition of deterrent sentences. These are all areas where Japan and the United States have contributed positively in the past and continue to participate actively through training programs.

The U.S. government funds a number of training programs to strengthen international IPR enforcement and patent examination. Since 2001, the U.S. government has conducted more than a dozen IP training and capacity building programs with Indian officials. It has also established a Global Intellectual Property Academy to consolidate and expand education programs for foreign judges, enforcement officials and administrators. The Japanese government, meanwhile, runs programs such as the Association for Overseas Technical Scholarship Training Program on Intellectual Property Rights, which brings private-sector representatives from developing nations in the Asia-Pacific region to Japan, where they receive training that enables them to return to their own countries and begin to set up IPR systems there. Participants in these programs include employees of patent

offices, lawyers, corporate patent management personnel, university professors, and prosecutors.

TOWARD A GLOBAL PATENT REGIME?

Current international patent cooperation, which seeks to improve efficiency and decrease duplication through common procedures and standards, is laying the foundation for a global patent regime. The Trilateral Commission, comprised of the European Patent Office, Japan Patent Office, and U.S. Patent and Trademark Office, bears the closest semblance to a global patent regime, accounting for about 80% of patent applications worldwide. Regional patent offices represent another significant trend in the internationalization of the patent system. Besides the European Patent Office, these include the African Regional Industrial Property Organization, the Eurasian Patent Organization, and the African Intellectual Property Organization. The most common determinants of which countries become “patent partners” appear to be geographic proximity, uniformity of language, and historical links. The United Kingdom, for example, is the main EU partner country for Ireland, Australia, New Zealand, and South Africa. In this respect, fostering initial cooperation between India and the United States, and India and the United Kingdom/EPO, would perhaps be a logical first step toward more strongly incorporating India into the international patent system.

Before India is ready to join such a system, however, it will need to coordinate its IPR enforcement efforts at home. As a first step, the Indian government should consider establishing a single centralized body that would coordinate IPR enforcement, identify and publicize best enforcement practices at the state level, and direct national resources to enforcement. This national body could eventually be responsible for coordinating with other English-speaking countries and the Trilateral

Organization, and later play a role in establishing a global patent regime. The Japanese and U.S. governments can provide technical assistance and training in these efforts to bring about greater uniformity in India’s exercise and enforcement of patent rights.

CONCLUSION

In the summer of 2006, a USPTO attorney will for the first time be posted to the U.S. Embassy in New Delhi as an “IPR attaché” with the sole responsibility of furthering U.S.-India cooperation on IPR. The U.S. and Japanese business communities are clearly excited about future prospects in India, both in terms of the introduction of innovative products and the potential for R&D investment and collaboration. India, meanwhile, wishes to foster its growing service and intellectual-property-based sectors. Necessary to all three countries’ efforts is the protection of intellectual property rights. Education about, and enforcement of, intellectual property rights is clearly one area where there is great potential for productive cooperation among Japan, the United States, and India. ▼

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