

Committee on Development and Intellectual Property (CDIP)

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DISCUSSION PAPER ON INTELLECTUAL PROPERTY (IP) AND THE INFORMAL ECONOMY

prepared by the Secretariat

I. INTRODUCTION

1. At the Fifth Session of the Committee on Development and Intellectual Property (CDIP), the Secretariat was requested to present a conceptual “non-paper” to the Sixth Session of the CDIP to lay out some of the key issues associated with Development Agenda Recommendation 34, in order to seek input from Member States as to the nature and direction of a possible project. This Discussion Paper is intended to fulfill this purpose.
2. To recall, WIPO Development Agenda Recommendation 34 reads as follows:

“With a view to assisting Member States in creating substantial national programs, to request WIPO to conduct a study on constraints to intellectual property protection in the informal economy, including the tangible costs and benefits of intellectual property protection in particular in relation to generation of employment.”

II. INTELLECTUAL PROPERTY AND THE INFORMAL ECONOMY

3. There are at least two ways in which intellectual property (IP) can be related to informal economic activity. First, firms in the informal economy generate intangible assets, in the form of small-scale technical innovations and brand names. However, they typically do not have access to credit markets, are not formally incorporated, and usually do not pay sales and income taxes, preventing them from acquiring, maintaining, and defending IP rights. Quite conceivably, this lack of access to the IP system may prevent the growth of these firms and their eventual formalization.
4. While many studies document examples of innovation in the informal economy, no systematic evidence appears to exist that would shed light on the effects of inadequate IP protection. Ideally, one would like to assess the importance of copying of informal intangible assets that otherwise would qualify for IP protection. This question is important: firms and individuals may find other ways of appropriating their innovative efforts and not all informal intangible assets may qualify for IP protection.
5. A second link between IP and the informal economy arises in the context of copyright piracy and trademark counterfeiting. Being illicit activities, the production and distribution of IP-infringing goods naturally take place in the informal sector. As such, they may be a non-trivial source of employment and income for poor people. Strengthened IP enforcement, notwithstanding its economy-wide justification, may cause hardship for affected informal workers, compounded by the fact that social safety nets often do not extend to the informal sector.
6. Understanding the role of counterfeiting and piracy activity in the informal sector may help in designing effective IP enforcement policies. In particular, studies have argued that short-term punishment of offenders of IP rights may have little impact on the fundamental incentives of individuals to break the law. They are likely to discount the risk of punishment when they first break the law and are therefore bound to return to their illicit activities. IP enforcement measures may therefore be more effective if they are complemented by the creation of legitimate employment opportunities for informal workers losing their income source.

III. CHALLENGES IN STUDYING LINKS BETWEEN IP AND THE INFORMAL ECONOMY

7. The above discussion is quite theoretical and, indeed, reflects the absence of credible empirical insights into the links between IP and the informal economy. The main reason for this lack of evidence is data. The informal economy escapes official statistical recording. While certain official data can be used to estimate the size of the informal economy (for example, by comparing income to expenditure statistics), such data do not yield any insight into the IP-related questions of interest here.
8. A formal investigation into the links between IP and the informal sector would thus need to rely on original survey work. Such work is highly resource intensive, could only be done at the micro-level (and not the economy-wide level), and, to the extent that the survey targets illicit activities, might encounter legal barriers.
9. Depending on the questions being asked, a second major problem in launching a formal investigation is the establishment of the right counterfactual economic outcome to

precisely identify the role of IP. For example, what types of informal intangible assets might qualify for IP protection and how would IP protection affect copying of those assets? Similarly, levels of counterfeiting and piracy are affected by many factors and isolating the effect of IP enforcement measures would be a challenging task. Ideally, one would focus on “quasi natural experiments” (e.g., cases where IP enforcement actions targeted a particular region at a particular point in time), but in practice such experiments are hard to find.

IV. POSSIBLE DIRECTIONS OF A CDIP PROJECT

10. In deciding on the direction of a possible CDIP project, Members may want to consider the following two questions:
 - (a) What would be the substantive direction of future work under Recommendation 34? Would it focus on informal intangible assets and lack of access of informal firms to the IP system? Would it look at the effects of counterfeiting and piracy on employment in the informal sector? Or are there other linkages between IP and the informal economy that should be addressed?
 - (b) What type of study work should be envisaged under Recommendation 34? In light of the above challenges, a rigorous empirical investigation would invariably entail original survey work and would thus be highly resource-intensive. However, it would at most offer selective evidence that may not lend itself to generalization. Would the collection of case studies and anecdotal evidence be a substitute for a fully fledged empirical investigation?

11. *The CDIP is invited to consider this document and provide guidance to the Secretariat as regards the implementation Recommendation 34.*

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