



Message

By

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at the

Symposium

Establishment of the Caribbean Court of Justice:
The Effect on Intellectual Property and International Trade

***Topic: Business and Trade Developments:
An Economic View of the CCJ's Effects on the Caribbean***

Place: Sherbourne Conference Center, Bridgetown, Barbados

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Time: 10:30 a.m – 12:00 p.m.

To my panel participants, Mr. Spence and Mr. Lehman, and our many distinguished guests here today, good morning!

In my remarks, I will discuss three key points: (1) the importance to the Caribbean of capturing and capitalizing on the hidden value in IPR as an asset; (2) the critical role IPR can play in encouraging business development and supporting the region's transition to knowledge-based and service-based industries; and (3) the vital role that the CCJ will play in enabling the region to realize points (1) and (2). In fact, I would like to posit that, without adequate intellectual property systems and consistencies in laws, their enforcement and administration across the region, the region will not be able to fully realize the significant economic value in IPR that is at stake.

First, a simple look at the economies of the developing world and their reliance on intellectual property protections proves the

relevance of intellectual property as an engine of growth. On this point I would like to refer once again to the paper entitled *Copyright, Culture and Development: The Role of Intellectual Property and of WIPO in the Cultural Industries* written by my colleague on this panel, Mr. Lehman, which I cited earlier this morning. Mr. Lehman's paper indicates that, in 2001, core copyright industries, such as movies, television programs, home videos, business and entertainment software, books, music and sound recordings, contributed an estimated \$535 billion to the U.S. economy. Studies conducted in other developed countries by the European Commission and others indicate that in Austria, Australia, Germany, and Sweden, amongst others, 3% to 5% of the gross national product is attributable to copyright industries.

Intellectual property represents such a significant and valuable economic resource because it plays an integral role in a wide range of areas, from the Internet to health care to literature and the arts to other areas of science and technology. No matter

where we are or what we do, we are surrounded by the fruits of human creativity, innovation and invention.

The rights generated in the creation of intellectual property have several key economic uses, such as (1) incentives for innovation, creativity and improvements in productivity; (2) assets in business planning and international marketing; (3) inducements to domestic and foreign investment, and (4) collateral in business financing. Each of these uses represents economic value.

In order to use IPR as effectively as possible to support economic growth, we first need to recognize that a great deal of economic value is tied up in IPR as an asset and I've tried to do that with some of the statistics I cited above. We also need to recognize that an effective and efficient administrative and judicial system is one of the essential requirements to unleash and protect that value. The ultimate goal of an IPR system should be to help creators, innovators and inventors obtain worldwide protection of

their rights so they can be rewarded financially for their ingenuity and the use of their creative works. In so doing, individuals, firms, and governments benefit from the income generated through the enforcement of these rights and from enrichment of the quality of life provided through the creative works.

The minimal requirements for the Caribbean to create the kind of intellectual property system that will help unleash the economic value of IPR include enactment of sound, modern intellectual property laws at the national level; harmonization and adherence to international trade standards and agreements across the region; establishment of administrative bodies that can effectively and efficiently collect and distribute royalties and enter into reciprocal agreements with sister societies on a worldwide basis; and the establishment of an effective enforcement and monitoring mechanism to fight piracy and counterfeiting.

A sound intellectual property system in the region will ensure that the real income loss from failing to secure IPR that is currently experienced by countries, firms, and individuals in the Caribbean will be reduced and hopefully eliminated. Each country must recognize its obligation to protect, preserve, leverage and share more equitably in the returns from all of its assets. We need to build the legal infrastructure and systems to ensure that the Caribbean and its people benefit from their cultural and other intangible assets. We must also help financial institutions recognize, accept, and utilize these intangibles as the valuable assets that they are. We must empower the royalty collecting organizations to ensure that others outside the region do not continue to reap the greatest portion of the economic benefits arising from the creativity and ingenuity coming out of the Caribbean region.

My second point is that the legal and institutional frameworks in the Caribbean for IPR, including the recognition of rights, appeals,

and enforcement, must also be conducive to enabling business development and the transition to service-based and knowledge-based industries based on IPR in the region. It was recognized many years ago that the protection of patents, as an example of intellectual property rights, offers incentives for invention, provides a level of comfort to inventors to disclose the invention, invites investment in the commercial development of the invention, and motivates others to further develop the concept, idea, process and/or product.

For countries to promote growth, intellectual property laws must encourage investment in new research and new artistic creations and must protect and allow the freedom to profit from these new ideas. Further, the capacity of collecting institutions must be strengthened.

It has been said that smaller market economies will only survive through innovation, more efficient production and service

provisioning and creative marketing. To truly benefit from the fruits of labor in the Caribbean, there must be sanctity for a unique identity, for ideas created and for other innovations.

Without the enforcement of exclusive rights to reap the rewards of these assets, free enterprise and the beneficial competition that it encourages would be discouraged or, at a minimum, limited.

Further, the transition between industry sectors that are key drivers for growth that is taking place around the world makes it such that any country that wants to advance must leverage the intellect and creativity of its people. Rapid changes in technology, increasing demand for business and personal services, and declines in traditional exports present both the greatest challenges and the greatest opportunities for the Caribbean. The success of Caribbean countries in meeting the challenges will depend on the ability to develop, protect and leverage its home-grown creativity and innovation and that of regional and international trading partners and firms. An effective intellectual

property system, coupled with pro-growth policy-making and focused strategic planning, will aid Caribbean countries in promoting and protecting intellectual assets, driving economic growth and building wealth.

National economic and social development strategies in the region should include a thorough assessment of the potential for income generation from unique cultural, geographic and other assets and must encourage the design and effective implementation of a system to effectively secure the rights to these assets, especially those that are already technically owned, e.g., indigenous and cultural assets and geographic representations.

Given the evidence from the U.S. economy that copyright industries contributed more to that economy and employed more workers than any other single industrial sector, profiting from unique cultural creations, geographic recognitions and other

intangible assets should be a key component in each Caribbean country's efforts to advance their economies and/or to reverse recent declines in GDP. In fact, strengthening of the legal and institutional infrastructure and human resource capacity of intellectual property systems in each Caribbean country should be viewed as directly supportive of national economic and social policy objectives.

So what is the importance of the CCJ in all of this? Well, in order to unleash the tremendous economic value latent in IPR in the region, there is a need for consistency in laws and in their administration and enforcement throughout the region.

Enforcement of intellectual property rights must be consistent, transparent, predictable, fair, efficient, and cost effective in order to create an environment conducive to stimulating inventiveness, attracting domestic and foreign private sector investment, increasing firm level, country and regional competitiveness,

encouraging financing, and facilitating regional and international trade.

Moreover, any sound intellectual property system must confront those who believe and tout the theory that developing countries should feel free to copy works created in other countries, especially the developed countries. These people most often cite Asian countries as examples. Due to limited intellectual property law protections in these countries in the past, these countries have become major forces in world markets by copying, pirating, and/or counterfeiting the works and goods of other countries.

What is often ignored in the story, however, is that many of these countries now realize the impact that the lack of enforcement of intellectual property rights has had on their domestic economies, local industries, and culture. Domestic industries in these countries have suffered tremendous harm from competition from pirated products and from the lack of intellectual property rights

and effective royalty collections. Further, legitimate product and service sales have been reduced, the reputations of high quality companies have been tarnished, and, in some cases, the public has been harmed.

As such, Caribbean governments, not just foreign and domestic companies, must regard the enforcement of IPR as their responsibility, the implementation of anti-piracy systems a must, and persons who infringe upon IPR as engaging in acts counter to the economic well-being of the country. Incentives must be put in place to discourage and prevent the unauthorized use and sale of intellectual property, and punishment must be instituted for infringement.

The CCJ, as the court of first instance for trade matters, can be the principal vehicle for accomplishing a common regional approach to enforcement and administration of IPR as well as other business and trade issues. Such an approach can ensure

the consistency, predictability, and fairness of enforcement of the rule of law that both domestic and foreign investors look for to determine where to invest their resources. This role for the CCJ ultimately helps create a regional business environment that is more attractive for investment and enhances the region's competitiveness in trade and investment. A common regional approach to IPR enforcement is also the most efficient, cost effective, and timely way for the region to realize the economic value of IPR.

As we know, the region seeks to economically integrate more fully through the CSME structure and to use that structure to enhance the region's global competitiveness. The CCJ, as a permanent, central, regional institution, is an entity that can authoritatively pronounce on the rights and obligations arising as a result of the CSME structure. To the extent the region uses the CSME structure to develop its common approach to IPR, the CCJ will be

a key actor in interpreting and applying the laws that will establish that common approach.

The CCJ, as the focal point for interpretation and enforcement of trade regimes dealing with issues that include IPR, will be a key factor in shaping and determining the pace of the region's standardization and harmonization around the terms of these trade regimes. In short, the CCJ is a critical component of the region's economic infrastructure, not just its legal infrastructure.

In closing, let me summarize my three principal points: first, there is tremendous economic value hidden in intellectual property that is being created in the region and the rights in that intellectual property are largely unsecured and untapped by individuals, firms, and governments in the region; second, more effective and visionary use of intellectual property by the region offers new economic opportunities that could offset declines in the region's traditional industries; and third, the CCJ as a regional institution

can greatly assist the efforts of the region to create standardized and harmonized legal approaches that facilitate realization of economic benefits tied up in IPR and in other opportunities that derive from having a consistent, fair, and predictable legal environment.