

# SOUTHERN AFRICA NEEDS INTELLECTUAL PROPERTY PROTECTION

Argues Judy Winegar Goans, an intellectual property attorney working on technical assistance projects around the world for Nathan Associates, writing in her personal capacity.

After more than two decades of trade discussions, some still question whether stronger intellectual property protection will benefit developing and least-developed countries. Opponents of stronger legal protection often claim that intellectual property laws will cause prices to rise – a result not actually observed in countries that have adopted new intellectual property laws. Advocates sometimes fail to explain how countries can translate legal reforms into an improved standard of living, so here are a few of the reasons Southern Africa needs stronger intellectual property protection.

## Protecting Consumers, Stopping Counterfeits

Some products are bad value at any price. In Africa, that includes medicines that don't work, calculators that fail during an important exam, chemicals that fail to protect crops. Counterfeits – goods bearing someone else's mark and often packaged to look exactly like a high-quality product – cost Africa far more than any savings to consumers. The real price is damage to Kenya's coffee crop from counterfeit agricultural chemicals, where chalk replaced the active ingredient, career limitations when cheap counterfeits of a well-known brand of calculator failed Egyptian students during their GCSE exams, and the health of people in sub-Saharan Africa when they purchase counterfeit malaria drugs, most with no active ingredients, but some containing just enough to raise concerns about the development of drug-resistance.

Strong and effective intellectual property laws protect consumers from being victimized by the unscrupulous producers of counterfeit goods – by preventing the importation and sale

of counterfeits and holding businesses accountable for their dishonest acts. Inexpensive products can still be imported and sold, provided they are labeled honestly and do not pose a danger to consumers. Consumers in Southern Africa deserve the same protection, and the same choices, available in the developed world.

## More Jobs, Better Pay, Increased Business Opportunities

A growing population needs more jobs, with better pay, and opportunities to build new domestic businesses. Intellectual property is a key element of the framework that allows business to flourish – and create the jobs that help us feed our families. Here are a few ways intellectual property has been used to build businesses and promote profitability. Any of these examples could be adopted in Southern Africa:

- **Expanding a business.** In 1886, pharmacist John Pemberton developed a non-alcoholic drink that he sold in his pharmacy, a true micro-enterprise. He kept the formula secret and registered a trademark for the beverage. Pemberton sold rights to a new owner, who marketed the drink and sold bottling rights in many locations. To combat imitators, the company commissioned a new bottle design, protecting it by design patent (industrial design) and later by trademark. Today the Coca-Cola Company's brand is worth more than US\$70 billion.

- **A new industry.** A good businessman in bad circumstances, Chung Ju-Yung's first business failed. In 1947, his country lacked industrial capability, so Chung licensed technology from Ford Motor Company to found Korea's Hyundai Motor Company. By 2005, the

company had become an exporter of technology, with its own research and development units and manufacturing facilities in several countries, sales of more than 2.5 million units, and about 68,000 employees worldwide.

- **Increased profits.** In 2001, Sri Lanka's Dankotuwa Porcelain was losing money, as cheap labor in neighboring countries drove down prices in the region. Unable to compete at lower prices, and unwilling to lower wages, the company engaged well-known designers to create product designs for Western markets and developed trademarks that were independent of the company's name. This intellectual property-based strategy allowed the company to demand a price commensurate with its quality – double that of other producers in the region – and move from loss to profit in less than a year.

- **A share of international success.** How often have we looked at a famous brand and wished we had a share of its success? Franchising, a complex intellectual property license, offers business owners a complete system for doing business. Rather than spending years building a reputation, franchisees meet established quality standards and pay for the instant brand recognition of a well-established business.

- **Adding value, promoting sales, keeping profits at home.** Many developing countries produce high-quality products that do not yield good wages or local profits. A number of countries and industries have adopted intellectual property-based strategies to add value to products and retain a greater share of income from their sales. In Colombia, an association of

coffee growers promoted the Columbian coffee geographical indication and certification (or quality) mark to develop sales. Profits were used to promote quality – and improve growers' lives by building roads and bridges, schools and health centers. Ethiopia's Government has recently moved to protect indications for three of its coffee varieties, now licensed to a major coffee seller, to raise the standard of living of the more than 80 million people involved in the production of these coffees. Around the world, governments and industries are protecting geographical indications and quality marks – Sri Lanka's Ceylon tea and Ceylon sapphires, India's Darjeeling tea, France's Champagne sparkling wine and Cognac liqueur, Irish linen, Egyptian cotton, to name a few.

#### Protecting Culture, Reaping the Benefits

Africa's heritage is a rich and varied tapestry of cultures, knowledge, and traditions. These national and regional treasures deserve to be safeguarded and exploited for the benefit of Africa's own people.

One way to safeguard culture is to record it. Traditional stories, music, art, and even dance can be recorded – as literary works, musical scores with or without lyrics, artistic works, choreographies. Performances can be recorded as phonograms or audiovisual works. Once placed in a tangible medium, works are automatically protected in the 163 Berne Convention countries. Copyright allows the author to prevent others from reproducing copies or making adaptations of the work, and from publicly reciting or performing the works, without the author's consent. Can someone else then prepare a similar work? Of course. Part of the richness of culture is that a story or song may take many forms. Traditional stories, music, art are in the public domain, and any person is free to collect, transcribe, and interpret them – but not to copy the work that has been created by another person.

#### Natural Resources, Traditional

**Enforcement.** Intellectual property works best when there is good enforcement and a community attitude that respects intellectual property rights. Piracy – identical copying of works protected by copyright – deprives authors, performers and producers of their fair rewards and in some cases – as with the Egyptian producer of *Days of Sadat* – puts companies out of business. Gavin Hood, director of the 2005 Academy Award-winning film *Tsotsi*, a South African film pirated during production, says it well: “When you buy a ticket and when you buy a genuine DVD, you are an investor in South African film as your money is going back to people who invest in local films. But when you buy a [pirated] DVD you are giving your money to criminals who are in the business of investing in nothing but their greedy souls.”

#### Knowledge, and an Equitable Sharing of Benefits

Many developing countries object to sharing traditional knowledge and, when patents are involved, costly legal procedures required to obtain the cancellation of wrongly granted patents. This issue is particularly troublesome in the area of “bioprospecting” – searching for plants or animals with particular properties, particularly for use as medicines. Countries have the right to regulate access to their natural resources, and if provided by contract, intellectual property rights provide a convenient tool for countries to obtain an equitable sharing of benefits from discoveries based on their biological resources or traditional knowledge.

#### Creating and Protecting a Country's Wealth

One of the most common reasons people say they are against intellectual property is that their country “is a poor country.” There are huge disparities in wealth among countries, but all countries are blessed with intellectual capital – creativity that can lead to the development of literary works and performing arts, inventions, new plant varieties, new designs for useful items. Intellectual property is the tool that allows people to convert this intellectual capital into money. Ghanaian software developer and entrepreneur Hermann Chinnery-Hesse says, “Technology is the only way for Africa to get rich. We don't have a proper infrastructure and we can't compete in manufacturing...But if you put me

behind a PC and tell me to write software for a Chinese customer, then I can compete brain for brain with anyone trying to do the same thing in the US.”

#### Further Reading

World Intellectual Property Organization (WIPO) website at <http://www.wipo.int>, and particularly the SMEs page found at <http://www.wipo.int/sme/en/>. This page has links to a number of topics, including more than two dozen brief case studies on IP in business.

International Chamber of Commerce, “Unfair Foreign Trade Practices: Agricultural Chemicals” (1 February 1984), <http://www.icc-ccs.co.uk/bascap/article.php?articleid=544>.

“Counterfeit Malaria Drugs on Rise in Asia, Africa; Could Lead to Drug-Resistant Strains, Study Says.” (June 14, 2006), [http://www.kaisernet.org/daily\\_reports/rep\\_index.cfm?DR\\_ID=37892](http://www.kaisernet.org/daily_reports/rep_index.cfm?DR_ID=37892). Also see Newton et al, “Manslaughter by Fake Artesunate in Asia—Will Africa Be Next?” <http://medicine.plosjournals.org/perlserv/?request=get-document&doi=10.1371/journal.pmed.0030197&ct=1>.

“Starbucks strikes Ethiopia deal,” BBC, <http://news.bbc.co.uk/2/hi/business/6619307.stm>.

“Tsotsi 'pirates' due in SA court,” BBC News (3 April 2006), <http://news.bbc.co.uk/2/hi/africa/4871882.stm>.

Briony Hale, “Ghana Trumps Mighty Microsoft,” BBC News/Business (3 June, 2003), <http://news.bbc.co.uk/2/low/business/2935210.stm>.