



PROMOTING INDUSTRIAL ZONES AND INVESTMENT MOBILIZATION
USAID WB/G SO1: EXPANDING ECONOMIC OPPORTUNITIES
CONTRACT No. 294-C-00-00-00071-00

**Intellectual Property Rights Workshop for the
Palestinian Ministry of National Economy
17 to 19 August 2003**

SUBMITTED

SEPTEMBER 2003

TO THE

USAID MISSION TO THE WEST BANK AND GAZA
SHERENE ABDUL HADI, CTO

BY

RALPH OMAN, IPR CONSULTANT
MICHAEL RYAN, IPR CONSULTANT

THE SERVICES GROUP (TSG)
2300 CLARENDON BOULEVARD 1110
ARLINGTON, VIRGINIA 22201
USA
WWW.TSGINC.COM

Table of Contents

- 1. Background**
- 2. Participants and objectives**
- 3. Training**
- 4. Next Steps**
- 5. Ralph Oman Trip Report**
- 6. Michael Ryan Trip Report**
- 7. Workshop Agenda**
- 8. What Every Manager Should Know About Trips**

1. Background

Under CLIN 0008 of the PRIZIM Contract, TSG provides technical assistance and material support to the IPR enforcement unit housed within the Ministry of National Economy.

The new Enforcement Unit has responsibility for establishing and training an IPR enforcement team and for investigating IPR infringement activity in WB/G. In order to support the Unit, PRIZIM conducted an Intellectual Property Rights (IPR) workshop at the Ministry of National Economy, Ramallah, West Bank from the 17th to 19th August 2003.

2. Participants and Objectives

The primary objective of the workshop was to provide a comprehensive training program to introduce IPR enforcement officers, customs and police to (1) economics of intellectual property and development, (2) the law of patent, copyright, and trademark, (3) the international treaty law and organizational trade, intellectual property, and criminal enforcement.

3. Training

His Excellency the Minister of National Economy, Minister Maher Masri opened the workshop. There were approximately 30 delegates from the Ministry of National Economy, Ministry of Finance; Ministry of Justice; Police, Customs, Union of Industry, Paltrade and the private sector.

The Honorable Ralph Oman and Professor Ryan delivered a program that carefully explained the details of the law and the impact that IP property has on the economy. The participation from the delegates was lively and of an extremely high level. The participation from the group over the three days demonstrated that a large number of the delegates had a sound knowledge of some very intricate IPR-related issues.

4. Next Steps

It was clear from the success of this event that there are a number of initiatives that could follow in order to keep the momentum going.

- a.) In the near term - Conduct an Intellectual Property IP week of awareness workshops among the key IP stakeholders in Palestinian society, including policymakers, judges, business people, and university faculty.
- b.) Send 4 to 6 people from the IPR team to an outside centre to gain hands on training on the identification of counterfeited products and IP practical enforcement.
- c.) In the longer term – assist with the institutional reform that puts in place trademark, patent and copyright legal reform. Assist in drafting laws and hold seminars to create awareness among stakeholders.
- d.) Conduct a one-week training program on a regional solution to the piracy problems in Palestine, Lebanon, Jordan, Iraq and Syria. The training to take place in Washington DC sponsored by the US Patent and Trademark Office and the US Copyright office in cooperation with TSG-PRIZIM, IIPi and the WIPO for the key stakeholders from WBG.

MEMORANDUM

DATE: August 26, 2003
SUBMITTED TO: Daniel Louw, TSG Ramallah
SUBMITTED BY: Ralph Oman
RE: Trip Report

BOSTON

BRUSSELS

FRANKFURT

HARRISBURG

HARTFORD

LONDON

LUXEMBOURG

NEW YORK

NEWPORT BEACH

PALO ALTO

PARIS

PHILADELPHIA

PRINCETON

SAN FRANCISCO

WASHINGTON

Professor Ryan and I spent an extraordinary three days conducting an intellectual property training seminar in Ramallah. Most of our success owes to the hard work and the excellent people skills of the team on the ground in Ramallah. They organized the seminar and brought in exactly the right mix of people -- government policy makers and administrators, enforcement officers from the police and customs, and several private sector representatives. The level of interest was exceedingly high, and the discussions were always lively and occasionally heated. I was struck by the level of expertise in the group as a whole, and by the depth of their understanding of the importance of intellectual property protection to the future economic and cultural development of the Palestinian people. I found it amazing that in the face of all of the suffering and political turmoil, the Palestinian Authority can calmly pursue a program lauding the virtues of intellectual property protection. Talk about keeping your eye on the ball.....

As you know, I served as the Register of Copyrights of the United States for more than eight years, and during my tenure I participated in numerous training sessions in foreign countries and in the United States. Since stepping down as Register in 1993 and entering

242009.1.03 9/25/2003 5:06 PM

private practice, I have continued to participate in these training programs at the request of international organizations and the U.S. government. With this twenty year experience, I can state categorically that the Ramallah program was far and away the most successful I have ever participated in, in terms of the intellectual engagement of the participants and the sincerity of their commitment to the underlying objective--the need to draft strong laws that afford real protection to authors and inventors, both foreign and domestic.

They were not simply paying lip service to the fad of the day, or saying things that they thought we wanted to hear. Not blessed with vast oil fields or fertile farmland, out of necessity they plan to capitalize on their notable human resources. They see copyright as the savior of their rich culture in music, art, and literature, and as a safeguard for their uniquely talented computer programmers. They see patents and trademarks as the sine qua non of a modern economy.

The seminar benefited greatly from the strong support of Maher al-Masri, the Minister of the National Economy, and his support helped foster the positive outlook of the participants. In many ways, the seminar transformed what had been a vaguely pro-IP mindset at the highest levels of government into a solid set of convictions among the mid-level executives and the working levels of the enforcement apparatus. The seminar gave them powerful intellectual arguments in favor of strong IP protection that will help them advance to the next stage in their economic thinking and legislative planning. I hope we demonstrated that as forceful advocates and enforcers of IP, they will enhance their careers and help their country.

By sponsoring the seminar, USAID and PRIZIM have provided the ammunition and momentum the Palestinians need to draft strong IP laws. The Ramallah participants will form “the cadre of the converted”, who will take the draft laws to the men and women in the souks, in industry, in the professions, and in the universities, and win new converts to the intellectual

property cause. The U.S. government has an important role to play in this on-going effort. With a modest investment in additional training, with the possibility of further study in Geneva and Washington for the key players, we could lock in the gains from the Ramallah experience and set the stage for the implementation of a solid regime of intellectual property protection by the Palestinian Authority.

Specifically, I would recommend three more initiatives. First, I would organize as quickly as possible a series of meetings in an academic setting and invite judges, professors, lawyers, and students to talk out the issues. These men and women are important opinion-makers, and without their support and understanding even the best laws will have no impact in the real world. Generally speaking, the Palestinian people, unlike some of their Arab neighbors, are very intellectually alive, and they have a strong interest in education, books, technology, ideas, computers, and culture. They can comprehend the argument that intellectual property protection will give them a powerful competitive edge over their regional neighbors, some of whom are rich, lazy, and brain dead.

Second, once the draft laws are ready for circulation, I would recommend a series of seminars in both the West Bank and Gaza primarily for business people whose livelihoods will be directly affected by the adoption of strong intellectual property laws, and by their vigorous enforcement. After building that base of support and understanding in the business community, the Palestinian Authority can adopt the new laws with some fanfare, and begin enforcing them with a reasonable level of popular support.

And, third, I would urge the U.S. Patent and Trademark Office and the U.S. Copyright Office to sponsor, in cooperation with TSG, the IIPi and the W.I.P.O., a one-week training program in Washington for key players from Gaza, the West Bank, Lebanon and Jordan. And, if the politics permit it, from Iraq and Syria as well. We want to integrate the Palestinians into a regional solution to the piracy and counterfeiting problems.

With their new laws in place, the Palestinian Authority will be able to join the WTO, ratify the intellectual property treaties, and become a full-fledged participant in the international economy the moment they regain their sovereignty. If the new IP-friendly culture takes root (and the political situation stabilizes), they will then be able to halt the brain drain, attract foreign investment, and encourage the transfer of state-of-the-art technology, all of which will help them create jobs and build an economic base for their future development. Whatever we can do to keep the Palestinians looking forward with hope -- focused on the eventual normalization of their affairs and the serious business of running a country -- the better for them and the better for their neighbors.

We have a unique opportunity with the Palestinian Authority. They are writing a Constitution and drafting new laws. They are essentially starting with a *tabula rasa* -- a clean slate -- and we can help them do it right. In other developing countries, weak laws are already in place, the will to enforce them non-existent, and the habits of piracy and corruption deeply entrenched. And inertia, born of hopelessness and self-doubt, blocks all meaningful reform. The Palestinian people, on the other hand, are poised and ready for a fresh start. They are eager to join the mainstream of world commerce with a strong sense of self-confidence. Anything we can do to facilitate that forward progress would be time and money well spent.

Final Report of Professor Michael P. Ryan, PhD

USAID-PRIZIM-INTELLECTUAL PROPERTY WORKSHOP
for
MINISTRY OF NATIONAL ECONOMY-IPR UNIT

Introduction to
The Economics of Intellectual Property and Development,
the Law of Patent, Copyright, and Trademark, and
the International Treaty Law and Organization
of Trade, Intellectual Property and Criminal Enforcement

Ramallah, West Bank, 17-19 August 2003

**Conducted by USAID, TSG-PRIZIM,
the Honorable Ralph Oman, Esq.,
and Professor Michael P. Ryan, PhD**

Workshop Assessment

More than merely attentive the participants in the workshop were highly engaged, discussed workshop topics and cases energetically, and asked thoughtful questions. Despite the lack of Palestinian state sovereignty and the uncertainties regarding intellectual property enforcement authority of the agencies of public administration, police, and customs enforcement represented in the workshop the participants behaved in an admirably forward-looking, even optimistic, way. They ought receive continued encouragement and technical assistance.

The Ministry leadership appears committed to reforming the institutions of the economy now, apparently under the belief either that the roadmap will ultimately yield a political settlement that establishes stability and peace or that the absence of a durable political settlement cannot be allowed to rationalize that the lack of economic opportunity permanently characterize the way of life for their people. I was impressed that Minister of the National Economy Masri seems committed to a sustained program of economic reform, that Director General of Trade Abdel-Hafiz Nofal actively and constructively participated throughout our workshop (rather than saying occasional warm words of encouragement before slipping away), and that Director of the Intellectual Property Right Enforcement Unit Nahid S. Al-Qudsi appears himself to be genuinely committed to improving the technical knowledge of the enforcement staff and to achieving the the organizational capacity to making effective enforcement happen.

Regarding Security

When the offer was made to conduct this workshop I was interested and a conversation with my colleague Ralph Oman quickly led me to decide to accept the offer because the purpose

seemed worthy. In telephone conversations both Will Cain and Dan Louw assured us that we would feel secure and they lived up to that commitment. I never felt insecure. In particular I thank Dan Louw and his staff for the judicious way in which they handled these issues. I was sitting in the American Colony Hotel working while waiting to go to the airport later that night when the bomb went off and, though it was obviously near-by, I felt sobered but not threatened.

Recommendation, Near-Term

Minister Masri told us that his government is presently drafting TRIPS-compliant intellectual property laws with the assistance of the Jordanian attorney-former minister who shepherded his country's accession to the WTO, Salah Basheer. That they are working on legislation and that they recruited a person of Mr. Basheer's caliber to help them reinforces to me that they are serious about all this. I worked with Mr. Basheer nearly five years ago regarding Jordanian patent law reform and have great respect for his knowledge and political savvy.

In order to support the legislative effort and generally build support within government and society in support of intellectual property institutionalization, I recommend that USAID/TSG-PRIZIM seek to create more awareness among Palestinians of how wellfunctioning intellectual property institutions can promote their economic growth and establish the foundation for greater marketplace economic opportunity by encouraging technology-based local and foreign direct investment, technology transfer through licensing and joint venture relationships, and authorial and artistic creativity and cultural-industry growth. In particular I encourage an AIP Week@ of awareness workshops that involve the key IP stakeholders in Palestinian society, including policymakers, judges, business people, and university faculty.

I designed the IP Week of activities in Amman that took place two weeks ago and have designed and conducted similar programs in a number of other countries. The key to success, however, is buy-in from the host government and societal stakeholders. IP Week in Amman was the best in which I have participated because (1) the patronage of the King, appearance by his brother Prince Ali, and luncheon addresses by a number of ministers signalled the government's full support, (2) the local associations and stakeholder communities were put in the lead in organizing and re-shaping the workshops and the speaker-lists, and (3) USAID/AMIR skillfully facilitated and supported the efforts of local leaders. The overall goal was to reinforce that intellectual property institution-building supports Jordan's goals for itself, not merely an American agenda of support for Warner music, Disney movies, Microsoft software, and Pfizer drug selling.

Recommendation, Longer-Term

Over a several-year period I recommend that USAID/TSG-PRIZIM encourage and offer assistance to the Palestinian Authority to carry out a program of economic institution reform

regarding intellectual property that supports and extends the TRIPS-compliance initiative through (1) the drafting and implementation of other patent laws not obligated by TRIPS that facilitate technology transfer (such as a law modelled on the US so-called ABayh-Dole Act, @ (2) the drafting and implementation of copyright laws that implement the 1996 WIPO digital copyright treaties, (3) governmental reforms with respect to the public administration of intellectual property (especially regarding patents, trademarks, and copyrights), (4) judicial know-how building and dispute settlement capacity-building regarding intellectual property, and (5) civil society reforms and institution-building with respect to, e.g., software business strategies, trademark and brand management business strategies, music royalty-collecting societies, university tech transfer offices. I lack sufficient knowledge about the Palestinian economy to provide great detail.

I also would encourage as much cooperation with Jordan as possible. King Abdullah and his cadre of young ministers are carrying out an energetic, focused, and determined process of economic reform and business activism. Since some 70% of Jordanians are ethnically Palestinian and with other political and diplomatic considerations in mind, cooperation would help everybody. Some activities might fruitfully involve Aqaba, since the ultimate success of that initiative will depend on building regional business and economic ties.

Rationale

The Palestinian circumstance may not have precedent in world politics and economy, but the situation may not be as gloomy as it appears when compared with other places around the world. Like Peru, the economic policies and institutions of the Palestinians need reform. But unlike Peru and like Mexico, Palestinians live near markets that are wealthy and technologically advanced (Israel) or, at least, wealthy (the oil exporting states). I was repeatedly told that Palestinians have a history of business relationships with Israelis and expect that those will be renewed when possible. Unlike the Peruvians, Palestinians seem to value business and entrepreneurship. The Palestinians enjoy support from European governments and their business communities and the Arab-American business communities can be similarly supportive. Like Taiwan, Palestinians lack diplomatic recognition but that has not seriously hampered the Taiwanese in building their economy. Like South Africa under apartheid, they are and may continue to be semi-disenfranchised people but their educational levels and business capabilities are much greater than possessed by blacks in South Africa. Like Taiwan and Singapore, Palestinians are dominated by a single political party and governance structure that seems to possess the political capacity to carry out a sustained program of economic reform. Unlike chaotic Iraq and increasingly insecure Indonesia and Philippines, Palestinians can conceivably have basic security in their territories despite present circumstances. Nevertheless, there are some problems. Like Singapore, Palestinians have a charismatic leader, but unlike Singapore's Lee Kuan Yew and his vigorous economic leadership, Palestinians may not be similarly led. It also appears that the present non-contiguous, fragmented Palestinian marketplace may persist for some time. It is not clear how big of an economic problem this will be but, at minimum, it

will surely create some logistical inefficiencies. In short, despite what appears to be a desperate circumstance, American encouragement and support regarding economic reform in general and intellectual property institution-building in particular may yield satisfying results.

USAID - PRIZIM - INTELLECTUAL PROPERTY WORKSHOP

For

Ministry of National Economy - IPR Unit

INTRODUCTION TO

THE ECONOMICS OF INTELLECTUAL PROPERTY AND DEVELOPMENT,
THE LAW OF PATENT, COPYRIGHT, AND TRADEMARK,
THE INTERNATIONAL TREATY LAW AND ORGANIZATION
OF TRADE, INTELLECTUAL PROPERTY, AND CRIMINAL ENFORCEMENT

Ramallah, West Bank, 17-19 August 2003

*Conducted by USAID, TSG - PRIZIM,
the Honorable Ralph Oman, Esq.,
and Professor Michael P. Ryan*

Participants and Objectives

This workshop aims to introduce IPR enforcement officers, customs and police to (1) economics of intellectual property and development, (2) the law of patent, copyright, and trademark, (3) the international treaty law and organization of trade, intellectual property, and criminal enforcement. Participants consider the institutional economics of patents and technological innovation, copyrights and cultural and informational expression, and trademarks and brand management and how these intellectual property legal regimes, when properly implemented, promote economic development. Discussions emphasize the historical relationships between intellectual property institutions and economic growth and development in the West and present understanding concerning developing and transitioning-economy countries in general and, in particular, with respect to the Arab Middle East, including foreign direct investment, trade, and intellectual property licensing. Participants study the key principles of patent, copyright, and trademark law through review of typical national statutes and examination of seminal cases in American intellectual property law. The central features of the public international treaty law and organization of trade and intellectual property are reviewed, including the the World Intellectual Property Organization, the Berne and Paris Conventions, UNESCO, and the TRIPS Agreement of the World Trade Organization, with special focus on the extensive criminal enforcement obligations of TRIPS. Participants study the particular challenges of intellectual property enforcement, including the localized and international dimensions of piracy and counterfeiting, and the criminal-legal institutions of enforcement .

DAY 1- Sunday -17th August 2003

9:00 - Opening of Workshop by his Excellency Minister of National Economy Minister

Maher Masri

Session I. Copyright and the Economics of Cultural and Informational Products Mr. Oman
Introduction to economics of intellectual property I: Copyrights and economics of cultural and informational products; historical overview of development of copyright law and technology of media, including printing press and the business of books and publishing, phonograph, radio, tape, CD and the business of music; the business of television and film, and the business of computer software; economic growth impact of the copyright industries and relationship with cultural, economic, and political development in general and, in particular, with respect to West Bank/Gaza and the Arab Middle East; the business of piracy and the challenges of enforcement with respect to music, movies, and software.

Break

Session II. Patents and the Economics of Technological Innovation and Growth Professor Ryan
Introduction to the economics of intellectual property II: Patents and the economics of technological innovation and growth; role of patent system in national innovation systems, including historical relationship between patents and technological innovation in the West and in developing and transitioning-economy countries in general and, in particular, with respect to West Bank/Gaza and the Arab Middle East; special focus on the economics and business of information technology, pharmaceuticals, and agri-chemicals; technology and commercial know-how transfer through foreign direct investment, trade, and licensing business strategies; the business of drug piracy, its impact on the public health system, and the challenges of patented, innovative-drug enforcement.

Break

Session III. **WIPO, TRIPS, and the Public International** Treaty Law and Organization of Trade and Intellectual Property, with emphasis upon Criminal Enforcement Obligations

Mr. Oman and Professor Ryan Historical overview of development of international intellectual property law and organization, including Berne and Paris Conventions and the World Intellectual Property Organization; copyright, cultural-intellectual properties and UNESCO; key principles of diplomacy and decision-making at WIPO; historical overview of origins and diplomacy of Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS) of World Trade Organization; key obligations of TRIPS, especially with respect to criminal enforcement; WIPO and UNESCO technical assistance mission and capabilities. .

Day 2 - Monday -1e August 2003

9:00 I. Basic Principles of Copyright Law and Policy

Mr. Oman Basic principles of copyright law and policy; originality test; idea/expression dichotomy; substantial similarity and infringement; special piracy challenges of copyrighted works; specific Berne Convention and TRIPS obligations with respect to copyright enforcement.

Break

Session II. Basic Principles of Patent Law and Policy

Professor Ryan Basic principles of patent law and policy; novelty and utility tests; prior art and examination; patent scope and limitations; patent gazette and technology research; special piracy challenges of patented technological innovations; specific Paris Convention and TRIPS obligations with respect to patent enforcement.

Break

Session III. Basic Principles of Trademark Law and Policy

Professor Ryan Basic principles of trademark and trade dress law and policy; examination and registration; distinctiveness and confusion; usage, strength and famousness; infringement; special challenges of counterfeited branded-products; specific Paris Convention and TRIPS obligations with respect to trademark enforcement.

Day 3 -. Tuesday -19' August 2003

9:00 Session I. Civil and Criminal-Law Legislative Needs for Intellectual Property Enforcement in West Bank/Gaza and the Arab Middle East
Mr. Oman Civil and criminal-law legislative needs for intellectual property enforcement in West Bank/Gaza and the Arab Middle East; legislatively mandated powers and authorities of police, customs, prosecution, and judges; provisions of criminal law with respect to search and seizure of pirated and counterfeited goods; provisions of criminal law with respect to prosecution, trial, and remedy.

Break

Session II. Institutional Requirements of Intellectual Property Enforcement

Mr. Oman and Professor Ryan Critical features of criminal justice system, including police power, prosecutorial authority, and criminal court capacity; border enforcement capability; alternative organizational strategies with respect to police, customs, and justice; finance and tax implications of intellectual property enforcement; common pitfalls and problems experienced around the world with respect to intellectual property enforcement and judicial capacity, including lack of resources and corruption.

Conclusion of program

2:15 pm Lunch - Al Bardauni Restaurant

Faculty

HONORABLE RALPH OMAN, ESQ.

Dechert

Former and one of the longest-serving Register of Copyrights, U. S. Library of Congress, and chief copyright advisor to the U. S. Congress; chief counsel to various legislative committees of Congress in 1970s and 1980s and co-draftsman of U.S. intellectual property legislation; former foreign service officer of U. S. Department of State; author of WIPO and UNESCO books and reports regarding copyright law and policy; an attorney in private practice; adjunct professor at George Washington University National Law Center; JD, Georgetown University.

PROFESSOR MICHAEL P. RYAN, PhD

Georgetown University School of Business

An associate professor on the Strategy, Economics, Ethics, and Policy faculty; presently coauthoring *Knowledge Management: Technology, Intellectual Property, and Organization in the World Economy*; author of *Knowledge Diplomacy: Global Competition and the Politics of Intellectual Property (1998)* and *Playing by the Rules: American Trade Power and Diplomacy in the Pacific (1995)*; author of U. S. Patent and Trademark Office report regarding international intellectual property enforcement and judicial capacity; PhD, University of Michigan.

***WHAT EVERY MANAGER SHOULD KNOW ABOUT TRIPS
AND THE INTERNATIONAL LAW AND ORGANIZATION
OF TRADE AND INTELLECTUAL PROPERTY***

PROFESSOR MICHAEL P. RYAN, PhD

1. The international law of patents, plant varieties, trade secrets, copyrights, industrial designs, and trademarks is based on a series of treaties promulgated late in the nineteenth century and amended throughout the twentieth to adapt to changing technologies and patterns of business competition.
2. The Paris Convention for the Protection of Industrial Property, signed in 1883 and amended through the years, does not obligate that minimum standards of patent protection be offered by Paris Union member states but does demand that members not discriminate against foreign rights holders, an obligation known as national treatment.
3. The Paris Convention calls on members to protect “undisclosed information,” that is, so-called trade secrets, so long as the information is kept secret, has commercial value, and that reasonable steps have been taken to keep it secret.
4. The Paris Convention binds members to ensure effective protection against unfair competition, particularly attempts to create confusion in the marketplace by trying to sell goods through unauthorized use of trademarks. It requires that “all goods unlawfully bearing a trademark or trade name shall be seized on importation into those countries of the Union where such mark or trade name is entitled to legal protection.”
5. The Patent Cooperation Treaty, signed in 1970 and later amended, makes it possible to seek patent protection simultaneously in each of a large number of countries by filing an international patent application. The applicant indicates in which of the PCT member states the application should have effect, which is the same as if application had been independently filed in the state’s patent office. The international application is then subjected to an international search of the prior art, which is carried out by one of the world’s major patent offices. The search report is communicated to the inventor, who may withdraw the application if the result of the search indicates that patentability is modest. If the applicant decides to continue with the international application, the application and search report are sent to all the designated national and regional patent offices in proper form and, if necessary, translated. The PCT provides inventors an efficient way of applying to multiple national authorities but does not provide an “international patent.” The treaty does, however, establish an “international preliminary examination” wherein, for an additional fee, a national or regional patent office will be asked to offer a nonbinding advisory opinion regarding the patentability of the invention.
6. The International Convention for the Protection of New Varieties of Plants, signed in 1971 and amended in 1991, establishes a union of member states that agree to confer “breeder’s rights” on

those who discover or develop new varieties of plants. The convention requires national treatment and establishes basic conditions for protection of a variety, including that it is “new, distinct, uniform, and stable.”

7. The Hague Agreement Concerning the International Deposit of Industrial Designs, signed in 1925 and amended through the years, allows nationals of any member state to secure protection for the industrial designs in all the contracting parties by depositing their design with its secretariat staff in Geneva.

8. The Berne Convention for the Protection of Literary and Artistic Works, signed in 1886 and amended quite a number of times, provides that works of expression “enjoy protection in all countries of the Union” provided that certain requirements are met, such as, that the work is a “published work.” The convention requires national treatment and establishes certain minimum obligations regarding exclusive rights and duration of rights.

9. The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, signed in 1961 and known as the Rome Convention, grants national treatment to performers, phonogram producers, and broadcasters regarding exclusive rights of performance, reproduction, and broadcast and public communication.

10. The Madrid Agreement Concerning the International Registration of Marks, dating to 1891 but amended a number of times, establishes the Madrid Union and provides that nationals of any of the member states may secure trademark protections applicable to the nationals’ goods and services, registered in their country of origin, in all member countries by filing their marks with the International Bureau of the World Intellectual Property Organization.

11. All of these intellectual property treaties are administered under the auspices of the World Intellectual Property Organization in Geneva. WIPO traces its origins to the secretariats established to administer the Paris Convention in 1883 and the Berne Convention in 1886. A 1967 diplomatic conference resulted in the establishment of WIPO, which became a specialized agency of the United Nations in 1974. WIPO carries out three main tasks: Help member states create multilateral norms; help developing countries write and administer national laws; serve the member states through administration of the treaties and as a resource center. WIPO carries out extensive technical assistance programs in countries around the world.

12. The member states of GATT (the predecessor organization to the World Trade Organization) decided to initiate international negotiations in 1986 toward an Agreement regarding Trade-Related Aspects of Intellectual Property Rights. The so-called TRIPS Agreement of 1994 produced agreement that is an important source of international public law regarding intellectual property. TRIPS obligations apply to all WTO members, though there are compliance phase-in periods.

13. TRIPS obligates product and process patents to nearly all types of inventions “in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application.” This clause legitimizes the patentability of pharmaceuticals, transgenic plants and

animals, and computer software. However, TRIPS also allows states to exclude inventions from patentability for reasons of “public order” or “morality.” These terms are not defined in the TRIPS Agreement. TRIPS provides patent holders with exclusive rights to make, use, sell, import, assign, or transfer a patent through license. Compulsory licensing is not prohibited but constrained. TRIPS re-iterates the national treatment norm within the international intellectual property regime.

14. TRIPS establishes that WTO members comply with the terms of the Berne Convention regarding literary and artistic works. It provides that computer programs and databases are to be protected as literary works, establishes certain minimum length of protections, and establishes certain exclusive rights to expressive-work creators.

15. TRIPS establishes that trademark owners possess exclusive rights of use when two firms are engaged in the same or closely related trade and “such use would result in a likelihood of confusion.” TRIPS strengthens the rights of owners of internationally well-known trademarks.

16. TRIPS requires that member states protect industrial designs that are “new or original” and that the owner of a protected industrial design has the right to prevent third parties from making, selling or importing articles “bearing or embodying a design which is a copy, or substantially a copy.”

17. Considerable TRIPS text is devoted to enforcement. The agreement provides that members “shall ensure that enforcement procedures... are available under their national laws so as to permit effective action against any act of infringement of intellectual property rights... including expeditious remedies to prevent infringement and remedies which constitute a deterrent to further infringements.” The general obligations include enforcement procedures that are “fair and equitable” but are not “unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays.” Procedures are to be transparent; decisions are to be delivered “without undue delay” and “based only on evidence in respect of which parties were offered the opportunity to be heard.” TRIPS requires the opportunity for judicial review of administrative decisions.

18. Civil procedures of TRIPS enforcement provisions include the right to timely written notice, the right to independent legal counsel, and the right to present relevant evidence. Judicial authorities shall have injunction authority, which is “the authority to order a party to desist from an infringement, inter alia to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after clearance of such goods.”

19. TRIPS states that judicial authorities ought possess the authority to order that infringers pay damages “adequate to compensate for the injury the right holder has suffered because of an infringement of his intellectual property right by an infringer who knew, or had reasonable grounds to know, that he was engaged in infringing activity.” Judicial authorities also ought possess the authority to “order prompt and effective provisional measures” to prevent infringement from occurring by preventing the distribution for sale or importation of infringing goods and by preserving evidence.” Procedures are also specified in some detail.

20. Members are obligated to adopt administrative or judicial procedures that afford rights holders the opportunity to stop the importation of infringing goods at the border through customs action. The rights holder must provide “adequate evidence” of infringement, however, before action need be taken, and the goods may only be held up at the border for ten days without the initiation of full judicial procedures or revocation of the suspension order.

21. In addition to civil actions, members are required to provide criminal procedures in cases of “willful trademark counterfeiting or copyright piracy on a commercial scale.” The remedies prescribed “shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistent with levels of penalties applied for crimes of a corresponding gravity.” Seizure, forfeiture, and destruction of the infringing goods must also be remedies made available.