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IP IN DEVELOPING NATIONS

Use the kitchen door

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Many of us fondly recall how the front door of our homes was where "official" visitors knocked, such as mail carriers and meter readers. However, the kitchen door, around the back, was where we greeted friends, neighbors and relatives. How welcome they were to come in, sit a spell, drink a cup and share ideas, viewpoints (and perhaps a recipe).

Promoting the rule of law around the globe can likewise be through the front door — sometimes diplomatically, but all too often intrusively — or via the kitchen door. Working with developing countries to build their intellectual property (IP) capabilities so as to promote social justice and advance the public interest can be a kitchen-door approach, refined and subtle, yet significant in impact.

Developing countries are facing a cycle of converging pressures: loss of arable land, depletion of natural resources, relentless industrialization, sprawling urbanization and rapid population growth. Providing for adequate health and nutrition will remain a challenge well into this century. Not surprisingly, to address these issues, developing countries are increasingly considering innovative advances in biotechnology. Yet cutting-edge biotechnologies, predominantly owned by entities from industrialized nations, invariably engender IP constraints that complicate access. In developing countries, inadequate capacity in IP management inhibits international technology transfer, stymies domestic innovation and impedes access to lifesaving technologies.

By building and strengthening human and institutional capacity in IP management, developing countries can overcome many of these obstacles. Increased capacity will facilitate international development partnerships and encourage increased international technology transfer of proprietary health and agricultural biotechnologies. Equitable access to critical biotechnological innovations will improve basic health and nutrition, especially among the poor of developing countries, disproportionately represented by women and children. When women and children are chronically sick and hungry, there is no social justice.

Strengthened human and institutional IP capacity in developing countries will also drive domestic innovation, generating products and processes that address the specific needs of the country and region. The connection between IP innovation and technological progress is fundamental; IP management capability is interwoven into the innovation framework, providing incentives, protecting innovative endeavors, providing a shelter for development and fostering a platform for commercialization and market entry. Such protection is essential, as innovation requires intensive investment of intellectual and physical capital. If ignored, the innovative assets of developing countries will remain disorganized, haphazardly managed and chronically underutilized, to the detriment of the public good.

IP in the public interest is increasingly a global concern. IP capacity fosters invention and drives innovation, raising standards of living and promoting sustainable economic development. The result is an engine, wherein the "gears" of education, invention, innovation and progress form an interconnected whole, with each "gear" driving the next. There is a critical need for coordinated global initiatives, integrating education and capacity building in IP with scientific and technological priorities and investments.

An opportunity for U.S. lawyers

For the legal community, these challenges present a unique opportunity to promote the rule of law around the globe. Building IP and technology-transfer capacity is, essentially, building legal infrastructure. As legal professionals, we have

an obligation to promote the rule of law, advocate for social justice and serve the public interest. Programs designed to assist developing countries in building IP capacity can simultaneously address these issues. Such programs should be cooperative, mutually beneficial and enriching. We, as legal professionals from industrialized countries, have much to learn from our international colleagues; capacity building is indeed reciprocal.

For lawyers, meaningful discussion of the issues must now yield to implementation. Pragmatically, building IP capacity in developing countries should focus on training and educating professionals in public-sector institutions, such as the national agricultural and health institutes. Programs could range from training in industrialized-country institutions, for example U.S. law schools, to outreach efforts in developing countries and cooperative efforts to establish IP management and technology-transfer offices.

Promoting the rule of law can be either a battering ram through the front door or, as advocated here, a visit to the kitchen door, where friends are welcome, problems are discussed and solutions are worked out. We, the legal community, have a responsibility to transform these global challenges into opportunities that will foster social justice, advance the public interest and promote the rule of law. We, the global community, will all be the beneficiaries of such initiatives.